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CANADIAN
INTERNATIONAL
TRADE TRIBUNAL



ANNUAL REPORT

1998-99

May 1999

FOR THE FISCAL YEAR ENDING
MARCH 31, 1999

ANNUAL REPORT

**FOR THE FISCAL YEAR ENDING
MARCH 31, 1999**



**Canadian
International
Trade Tribunal**

ANNUAL REPORT

FOR THE FISCAL YEAR ENDING

MARCH 31, 1999



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CHAIRMAN

PRÉSIDENT

TABLE OF CONTENTS

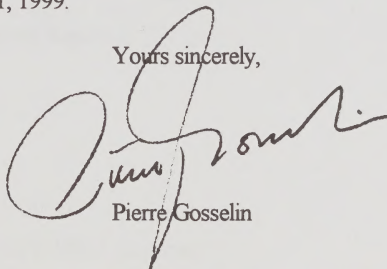
May 27, 1999

The Honourable Paul M. Martin, P.C., M.P.
Minister of Finance
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

I have the honour of transmitting to you, for tabling in the House of Commons, pursuant to section 41 of the *Canadian International Trade Tribunal Act*, the Annual Report of the Canadian International Trade Tribunal for the fiscal year ending March 31, 1999.

Yours sincerely,



Pierre Gosselin

TABLE OF CONTENTS

Chapter I	Tribunal Highlights in Fiscal Year 1998-99	1
Chapter II	Mandate, Organization and Activities of the Tribunal	5
Chapter III	Dumping and Subsidizing Inquiries and Reviews	15
Chapter IV	Appeals	31
Chapter V	Economic, Trade, Tariff and Safeguard Inquiries	43
Chapter VI	Procurement Review	59
Chapter VII	Finding the Right Procedural Balance in SIMA Inquiries	69
	Publications	77

LIST OF TABLES

Chapter I	Tribunal's Caseload in Fiscal Year 1998-99	4
Chapter II	Organization	9
	Legislative Mandate of the Tribunal	10
	Proposed Process and Timetable for Preliminary Injury Inquiry	12
	Proposed Process and Timetable for Expiry Review	13
Chapter III	Findings Issued Under Section 43 of SIMA and Inquiries Under Section 42 of SIMA in Progress at Year End	24
	Orders Issued Under Section 76 of SIMA and Reviews in Progress at Year End	25
	Findings and Orders in Force as of March 31, 1999	26
	Cases Before the Federal Court of Canada or a Binational Panel	29
Chapter IV	Decisions on Appeals	33
	Appeal Decisions	38
	Tribunal Decisions Appealed to the Federal Court of Canada	40
	Decisions of the Federal Court of Canada	41
Chapter V	Disposition of Requests for Tariff Relief	50
	Notices of Expiry of Tariff Relief Recommendations	52
	Disposition of Reviews of Tariff Relief Recommendations	53
	Tariff Relief Recommendations in Place	54
Chapter VI	Summary of Procurement Review Activities	60
	Disposition of Procurement Complaints	64
	Cases Before the Federal Court of Canada	67

CHAPTER I

TRIBUNAL HIGHLIGHTS IN FISCAL YEAR 1998-99

Members

On April 6, 1998, Mr. Richard Lafontaine was appointed to the position of Member of the Canadian International Trade Tribunal (the Tribunal). Prior to his appointment, Mr. Lafontaine was Chair of the Standards Council of Canada. Mr. Lafontaine has also held senior positions with Warnock Hersey Professional Services Ltd., Lavalin and its successor, SNC - Lavalin, and Inchcape Testing Services.

During the fiscal year, the terms of Messrs. Robert C. Coates, Q.C., Arthur B. Trudeau and Charles A. Gracey as Members of the Tribunal expired. The Tribunal takes this opportunity to thank these Members for their valuable contribution to the Tribunal's work.

Bill C-35 Amending the *Special Import Measures Act* and the *Canadian International Trade Tribunal Act*

On March 25, 1999, Bill C-35 that amends the *Special Import Measures Act* (SIMA) and the *Canadian International Trade Tribunal Act* (the CITT Act) received Royal Assent. The date of implementation will be established by Order in Council.

The main changes in SIMA are a re-allocation of responsibilities between the Tribunal and the Department of National Revenue (Revenue Canada) with respect to preliminary injury determinations and expiry reviews. The amendments also clarify the public interest provisions of section 45 of SIMA. In addition, a change in the CITT Act will give experts access to confidential information in Tribunal inquiries, subject to certain conditions. Chapter II provides more information on the legislative changes affecting the Tribunal.

Dumping and Subsidizing Inquiries and Reviews

In fiscal year 1998-99, the Tribunal issued two findings following injury inquiries under section 42 of SIMA. At the end of the fiscal year, three inquiries were in progress. During the fiscal year, the Tribunal also issued five orders following reviews under section 76. At the end of the year, there were five reviews in progress.

Public Interest Investigation

On April 29, 1998, the Tribunal, under subsection 43(1) of SIMA found that the dumping in Canada of certain prepared baby foods originating in or exported from the United States (Inquiry No. NQ-97-002) had caused material injury to the domestic industry. Having received representations on the question of public interest, the Tribunal decided to initiate a public interest investigation under section 45 of SIMA. On November 30, 1998, the Tribunal issued its report to the Minister of Finance recommending a reduction in the anti-dumping duties on certain prepared baby foods from the United States.

Trade and Tariff References

Dairy Blends

On June 30, 1998, the Tribunal submitted to the Government its report on the importation of dairy product blends outside the coverage of Canada's tariff-rate quotas. The inquiry was referred to the Tribunal on December 17, 1997, by the Governor in Council on the recommendation of the Minister of Finance, the Minister of Agriculture and Agri-Food and the Minister for International Trade.

Textiles

During fiscal year 1998-99, the Tribunal issued 12 reports to the Minister of Finance concerning requests for tariff relief. In addition, the Tribunal's fourth annual status report on the investigation process was submitted to the Minister of Finance on February 11, 1999.

Appeals of Revenue Canada Decisions

The Tribunal issued decisions on 90 appeals from Revenue Canada decisions made under the *Customs Act*, the *Excise Tax Act* and SIMA.

Pursuant to a reference from the Deputy Minister of National Revenue (the Deputy Minister) (Reference No. AP-98-055) under section 70 of the *Customs Act*, the Tribunal rendered its decision with respect to the tariff classification of butteroil blends, comprising less than 50 percent butteroil and more than 50 percent sugar (sucrose), and the tariff classification of blends of butteroil and glucose. With respect to the tariff classification of blends of butteroil and processing solids, the Tribunal was of the view that it was not possible to reach a definitive view on the classification, in light of the indeterminate and variable nature of ingredients which may go to make up the processing solids portion of such blends.

**Procurement
Review**

The Tribunal received 55 new complaints during the fiscal year. The Tribunal issued 21 written determinations of its findings and recommendations. Ten of these determinations related to cases that were in progress at the end of fiscal year 1997-98. In 9 of the 21 written determinations, the complaints were determined to be valid or valid in part.

**Inquiry Process
and SIMA**

For a number of years, the Tribunal has reported in the Annual Report on its efforts to improve the inquiry process under SIMA. This year's annual report includes a chapter that describes, in more detail, initiatives that have been implemented to improve the Tribunal's inquiry process.

**Access to
Tribunal Notices,
Decisions and
Publications**

Tribunal notices and decisions are published in the *Canada Gazette*. Those relating to procurement complaints are also published in *Government Business Opportunities*.

The Tribunal's Web site (www.citt.gc.ca) provides an exhaustive repository of all Tribunal decisions, as well as other information relating to the Tribunal's current activities.

**Rules of
Procedure**

The Tribunal is pursuing its extensive review of the *Canadian International Trade Tribunal Rules* (Tribunal's Rules of Procedure) in order to eliminate unnecessary rules, increase efficiency and transparency and preserve fairness. The proposed amendments will facilitate procedures arising from technological changes. The changes to SIMA and the CITT Act also require the Tribunal to amend its rules in order to respond to these changes.

**Meeting Statutory
Deadlines
(Timeliness)**

All of the Tribunal inquiries were completed on time, and decisions were issued within the statutory deadlines. For appeals of Revenue Canada decisions that are not subject to statutory deadlines, the Tribunal usually issues, within 120 days of the hearing, a decision on the matter in dispute, including the reasons for its decision.

**New Information
Brochures**

The Tribunal published two new information sheets entitled "Information on Import Safeguard Inquiries and Measures" and "Information on Economic, Trade and Tariff Inquiries." Both can be accessed on the Tribunal's Web site.

Tribunal's Caseload in Fiscal Year 1998-99

	Cases Brought Forward from Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions/ Reports Issued	Cases Withdrawn/ Not Initiated	Cases Outstanding (March 31, 1999)
SIMA ACTIVITIES						
References (Advice)	-	2	2	2	-	-
Inquiries	1	4	5	2	-	3
Public Interest Requests	-	1	1	1	-	-
Requests for Review	-	-	-	-	-	-
Expiries ¹	2	6	8	7	1	-
Reviews	3	7	10	5	-	5
APPEALS						
<i>Customs Act</i>	231	75	306	78	69	159
<i>Excise Tax Act</i>	187	9	196	11	12	173
SIMA	<u>59</u>	<u>24</u>	<u>83</u>	<u>1</u>	<u>47</u>	<u>35</u>
Total	477	108	585	90	128	367
ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES						
Textile Reference						
Requests for Tariff Relief	19	19	38	17 ²	6	15
Expiries ¹	3	2	5	3	1	1
Reviews	-	3	3	3	-	-
Economic, Trade and Tariff-Related Matters	1	-	1	1	-	-
PROCUREMENT REVIEW ACTIVITIES						
Complaints	11	55	66	24 ³	27	15

1. As a result of a different method of reporting expiries, the first column refers to expiries for which decisions on whether or not to review had not been made prior to the end of the previous fiscal year. The fourth column refers to decisions to review.
2. The Tribunal actually issued 12 reports to the Minister of Finance which related to 17 requests for tariff relief.
3. The Tribunal actually issued 21 written determinations which related to 24 procurement complaints.

CHAPTER II

MANDATE, ORGANIZATION AND ACTIVITIES OF THE TRIBUNAL

Introduction

The Tribunal is an administrative tribunal operating within Canada's trade remedies system. It is an independent quasi-judicial body that carries out its statutory responsibilities in an autonomous and impartial manner and reports to Parliament through the Minister of Finance.

The main legislation governing the work of the Tribunal is the CITT Act, the *Canadian International Trade Tribunal Regulations* (the CITT Regulations), the *Canadian International Trade Tribunal Procurement Inquiry Regulations*, the Tribunal's Rules of Procedure, SIMA, the *Customs Act* and the *Excise Tax Act*.

Mandate

The Tribunal's primary mandate is to:

- conduct inquiries into whether dumped or subsidized imports have caused, or are threatening to cause, material injury to a domestic industry;
- hear appeals of Revenue Canada decisions made under the *Customs Act*, the *Excise Tax Act* and SIMA;
- conduct inquiries into complaints by potential suppliers concerning federal government procurement that is covered by the *North American Free Trade Agreement* (NAFTA), the *Agreement on Internal Trade* (the AIT) and the World Trade Organization (WTO) *Agreement on Government Procurement* (the AGP);
- conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their production operations;
- conduct safeguard inquiries into complaints by domestic producers that increased imports are causing, or threatening to cause, serious injury to domestic producers; and
- conduct inquiries and provide advice on such economic, trade and tariff issues as are referred to the Tribunal by the Governor in Council or the Minister of Finance.

Method of Operations

In carrying out most of its responsibilities, the Tribunal conducts inquiries with hearings that are open to the public. These are normally held in Ottawa, Ontario, the location of the Tribunal's offices, although hearings may also be held elsewhere in Canada in person or through videoconferencing facilities. The Tribunal has rules and procedures similar to those of a court of law, but not quite as formal or strict. The CITT Act states that hearings, conducted generally by a panel of three members, should be carried out as "informally and expeditiously" as the circumstances and considerations of fairness permit. The Tribunal has the power to subpoena witnesses and require parties to submit information. The CITT Act contains provisions that strictly control access to confidential information.

The Tribunal's decisions may be reviewed by or appealed to, as appropriate, the Federal Court of Canada and, ultimately, the Supreme Court of Canada, or a binational panel under NAFTA, in the case of a decision affecting US and/or Mexican interests in SIMA. Governments that are members of the WTO may challenge some of the Tribunal's decisions to a dispute settlement panel under the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes*.

Membership

The Tribunal may be composed of nine full-time members, including a Chairman and two Vice-Chairs, who are appointed by the Governor in Council for a term of up to five years that is renewable one time. A maximum of five additional members may be temporarily appointed. The Chairman is the Chief Executive Officer responsible for the assignment of members and for the management of the Tribunal's work. Members come from a variety of educational backgrounds, careers and regions of the country.

Organization

Members of the Tribunal, currently 6 in number, are supported by a permanent staff of 86 people. Its principal officers are the Secretary, responsible for administration, relations with the public, dealings with other government departments and other governments, and the court registrar functions of the Tribunal; the Executive Director, Research, responsible for the investigative portion of the inquiry, for the economic and financial analysis of firms and industries and for other fact finding required for Tribunal inquiries; and the General Counsel, responsible for the provision of legal services to the Tribunal.

Consultations

The Tribunal, through the Tribunal/Canadian Bar Association Bench and Bar Committee, provides a forum to promote discussion on issues of importance with the bar. The committee also includes representatives from the trade consulting

**Bill C-35
Amending SIMA
and the CITT Act**

community. The Tribunal holds meetings with the bar and representatives of industries and others that appear or that are likely to appear before the Tribunal to exchange views on new procedures being considered by the Tribunal prior to their distribution as guidelines or practice notices.

One of the main thrusts of the SIMA amendments is a re-allocation of responsibilities between the Tribunal and Revenue Canada for each to focus on its respective expertise in injury and in dumping and subsidizing. The Tribunal, instead of the Deputy Minister, will make the preliminary determination of injury. A new 60-day preliminary inquiry is created for this purpose. Domestic producers will continue to file their complaints of alleged injurious dumping with the Deputy Minister. The Tribunal's preliminary inquiry will commence when the Deputy Minister initiates a dumping or subsidizing investigation.

The Deputy Minister will make the determination of likelihood of continuation or resumption of dumping or subsidizing that the Tribunal now makes in expiry reviews. The Tribunal will continue to make the determination regarding the likelihood of material injury. Parties will also continue to make submissions to the Tribunal supporting or opposing an expiry review, and the Tribunal will continue to decide if a review is warranted and if a finding or order should be rescinded or continued, with or without amendment. The amendments also clarify section 76 of SIMA, establishing separate "interim" and "expiry" reviews. In the new interim review, the Tribunal will be able to review certain aspects of a finding or order, without having to consider whether to rescind or continue the finding or order for an additional period of five years.

The other significant change to SIMA affecting the Tribunal is a clarification of the public interest provisions under section 45. The Tribunal will determine, on the basis of requests by interested persons, whether there are reasonable grounds for initiating a public interest inquiry. The legislation also provides for the *Special Import Measures Regulations* (the SIMA Regulations) to set out the factors that the Tribunal may consider in determining if a reduction or elimination of duties would be in the public interest. The amendments introduce a change in what recommendations the Tribunal may make under section 45. Under the current regime, the Tribunal may only recommend the elimination or reduction of duties. Under the amended section 45, it also has the option of recommending a price or prices that are "adequate to eliminate injury ... to the domestic industry."

There are several other amendments to SIMA, most of which will affect Revenue Canada. However, a number of amendments will change, to some degree, the manner in which the Tribunal conducts injury inquiries and reviews. In addition, amendments to the CITT Act will give experts "acting under the

direction and control of counsel” access to confidential information in Tribunal proceedings, except in appeals. These same amendments create penalty provisions for any violation of confidentiality undertakings that counsel and experts may make.

The implementation of the legislative changes will be accompanied by new and revised SIMA Regulations and CITT Regulations, Tribunal Rules of Procedure and Tribunal guidelines on the conduct of preliminary injury inquiries, reviews and public interest inquiries and on access to confidential information by experts. The proposed processes and timetables for preliminary injury inquiries and expiry reviews are appended to this chapter.

Organization

CHAIRMAN

Pierre Gosselin

VICE-CHAIRS

Raynald Guay
Patricia M. Close

MEMBERS

Anita Szlajak
Peter F. Thalheimer
Richard Lafontaine

SECRETARIAT

Secretary
Michel P. Granger

RESEARCH BRANCH

Executive Director of Research
Ronald W. Erdmann

LEGAL SERVICES BRANCH

General Counsel
Gerry Stobo

Legislative Mandate of the Tribunal

Section	Authority
CITT Act	
18	Inquiries on Economic, Trade or Commercial Interests of Canada by Reference from the Governor in Council
19	Inquiries Into Tariff-related Matters by Reference from the Minister of Finance
19.01	Safeguard Inquiries Concerning Goods Imported from the United States and Mexico
19.02	Mid-term Reviews of Safeguard Measures and Report
20	Safeguard Inquiries Concerning Goods Imported Into Canada and Inquiries Into the Provision, by Persons Normally Resident Outside Canada, of Services in Canada
23	Safeguard Complaints by Domestic Producers
23(1.01) and (1.02)	Safeguard Complaints by Domestic Producers Concerning Goods Imported from the United States and Mexico
30.08 and 30.09	Extension Inquiries of Safeguard Measures and Report
30.11	Complaints by Potential Suppliers in Respect of Designated Contracts

SIMA (Anti-dumping and Countervailing Duties)

33, 34, 35 and 37	Advice to Deputy Minister
42	Inquiries With Respect to Injury Caused by the Dumping and Subsidizing of Goods
43	Findings of the Tribunal Concerning Injury
44	Recommencement of Inquiry (on Remand from the Federal Court of Canada or a Binational Panel)
45	Advice on Public Interest Considerations
61	Appeals of Re-determinations of the Deputy Minister Made Pursuant to Section 59 Concerning Whether Imported Goods are Goods of the Same Description as Goods to which a Tribunal Finding Applies, Normal Values and Export Prices or Subsidies
76	Reviews of Findings of Injury Initiated by the Tribunal or at the Request of the Deputy Minister or Other Interested Persons
76.1	Reviews of Findings of Injury Initiated at the Request of the Minister of Finance
89	Rulings on Who is the Importer

Legislative Mandate of the Tribunal (cont'd)

Section	Authority
<i>Customs Act</i>	
67	Appeals of Decisions of the Deputy Minister Concerning Value for Duty and Origin and Classification of Imported Goods
68	New Hearings on Remand from the Federal Court of Canada
70	References of the Deputy Minister Relating to the Tariff Classification or Value for Duty of Goods
<i>Excise Tax Act</i>	
81.19, 81.21, 81.22, 81.23 and 81.33	Appeals of Assessments and Determinations of the Minister of National Revenue
81.32	Requests for Extension of Time for Objection or Appeal
<i>Softwood Lumber Products Export Charge Act</i>	
18	Appeals of Assessments and Determinations of the Minister of National Revenue
<i>Energy Administration Act</i>	
13	Declarations Concerning the Amount of Oil Export Charge



PROPOSED PROCESS AND TIMETABLE FOR PRELIMINARY INJURY INQUIRY

			Days	Canadian International Trade Tribunal			
Revenue Canada initiates dumping/subsidizing investigation (90 days)	Start of Revenue Canada investigation	Tribunal inquiry (60 days)	0 / 1	Notice of commencement of inquiry Receipt of file from Revenue Canada			
			12	Publication of notice in <i>Canada Gazette</i>			
			20	Notices of appearance from parties and counsel Submissions from parties supporting the complainant(s)			
			22	Distribution of Revenue Canada file and, if necessary, of staff research or panel questions			
			32	Submissions by other parties (importers and exporters)			
	Earliest date for preliminary determination of dumping or subsidizing		39	Domestic producers' reply submissions			
			60	Preliminary determination of injury or termination, both with reasons			
			Preliminary determination of dumping or subsidizing or termination (Possibility of extension of up to 45 days)		61-89	Preparation of questionnaires for possible inquiry under section 42	
					90		
					30 days		
			Next day	Commencement of inquiry under section 42 Tribunal issues questionnaires			

Note: No Tribunal questionnaires or oral hearing, except in exceptional circumstances.

PROPOSED PROCESS AND TIMETABLE FOR EXPIRY REVIEW

Notice of Expiry (LE) issued at least 10 months before expiry

		Days	Canadian International Trade Tribunal
LE phase (approx. 50 days)		1	Notice of expiry
		25	Submissions
		33	Reply submissions
		50	Notice of review, or decision not to initiate with reasons 15 days later
Expiry review (approx. 250 days)	Revenue Canada likelihood of dumping/subsidizing phase (120 days)	1	File transferred to Revenue Canada
		20	Notices of appearance from parties and counsel
	 Revenue Canada likelihood of dumping/subsidizing determination	120	
	Tribunal likelihood of injury phase (approx. 130 days)	1	Receipt of file from Revenue Canada Rescission of finding if Revenue Canada's determination is negative; likelihood of injury phase of review, if determination is positive
		15	Distribution of Revenue Canada file to parties
		50	Distribution of file (Staff report and any remaining exhibits)
		80 / 85	Hearing
		130	Decision to rescind or continue, with or without amendment, with reasons

Note: On day one of its likelihood of dumping/subsidizing investigation, Revenue Canada will issue questionnaires to producers, exporters and importers. Replies to these questionnaires will be included in the file transferred to the Tribunal.

CHAPTER III

DUMPING AND SUBSIDIZING INQUIRIES AND REVIEWS

The Process

Under SIMA, Canadian producers may have access to anti-dumping and countervailing duties to offset unfair injurious competition from goods exported to Canada:

- (1) at prices lower than sales in the home market or lower than the cost of production (dumping), or
- (2) that have benefited from certain types of government grants or other assistance (subsidizing).

The determination of dumping and subsidizing is the responsibility of Revenue Canada. The Tribunal determines whether such dumping or subsidizing has caused “material injury” or “retardation” or is threatening to cause material injury to a domestic industry.

A Canadian producer or an association of Canadian producers begins the process of seeking relief from alleged injurious dumping or subsidizing by making a complaint to the Deputy Minister. The Deputy Minister may then initiate a dumping or subsidizing investigation leading to a preliminary and then a final determination of dumping or subsidizing. The Tribunal commences its inquiry when the Deputy Minister issues a preliminary determination. Revenue Canada levies provisional duties on imports from the date of the preliminary determination.

Inquiries

When it commences an inquiry, the Tribunal seeks to make all interested parties aware of the inquiry. It issues a notice of commencement of inquiry that is published in the *Canada Gazette* and forwarded to all known interested parties.

In conducting inquiries, the Tribunal requests information from interested parties, receives representations and holds public hearings. Parties participating in these proceedings may conduct their own cases or be represented by counsel. The Tribunal staff carries out extensive research for each inquiry. The Tribunal sends questionnaires to manufacturers, importers, purchasers and, in some inquiries, exporters. Questionnaire responses are the primary source of information for staff reports. These reports focus on the factors that the Tribunal considers in arriving at decisions regarding material injury or retardation or threat of material injury to a

domestic industry. The reports become part of the case record and are made available to counsel and parties. Confidential or business-sensitive information is protected in accordance with provisions of the CIIT Act. Only independent counsel who have filed declarations and confidentiality undertakings may have access to such confidential information.

The CIIT Regulations prescribe factors that the Tribunal may consider in its determination of whether the dumping or subsidizing of goods has caused material injury or retardation or is threatening to cause material injury to a domestic industry. These factors include, among others, the volume of dumped or subsidized goods, the effects of the dumped or subsidized goods on prices and the impact of the dumped or subsidized goods on production, sales, market shares, profits, employment and utilization of production capacity.

The Tribunal holds a public hearing about 90 days after the commencement of the inquiry following receipt of the Deputy Minister's final determination of dumping or subsidizing. At the public hearing, domestic producers attempt to persuade the Tribunal that the dumping or subsidizing of goods has caused material injury or retardation or is threatening to cause material injury to a domestic industry. Importers and, sometimes, exporters and users of the goods usually challenge the domestic producers' case. After cross-examination by parties and then examination by the Tribunal, each side has an opportunity to respond to the other's case and to summarize its own. In many inquiries, the Tribunal calls witnesses who are knowledgeable about the industry and market in question. Parties may also seek exclusions from a Tribunal finding of material injury or retardation or threat of material injury to a domestic industry.

The Tribunal must issue its finding within 120 days from the date of the preliminary determination by the Deputy Minister. The Tribunal has an additional 15 days to issue a statement of reasons explaining its finding. A Tribunal finding of material injury or retardation or threat of material injury to a domestic industry is the legal authority for the imposition of anti-dumping or countervailing duties by Revenue Canada.

Advice Given Under Section 37 of SIMA

When the Deputy Minister decides not to initiate a dumping or subsidizing investigation because there is insufficient evidence of injury, the Deputy Minister or the complainant may, under section 33 of SIMA, refer the matter to the Tribunal for an opinion as to whether or not the evidence before the Deputy Minister discloses a reasonable indication that the dumping or subsidizing has caused material injury or retardation or is threatening to cause material injury to a domestic industry. When the Deputy Minister decides to initiate an investigation, a similar recourse is available to the Deputy Minister or any person or government under section 34 of SIMA.

Inquiries Completed in 1998-99

Certain Prepared Baby Foods

NQ-97-002

*Finding:
Injury
(April 29, 1998)*

Section 37 of SIMA requires the Tribunal to render its advice within 30 days. The Tribunal makes its decision, without holding a public hearing, on the basis of the information before the Deputy Minister when the decision regarding initiation was reached.

The Tribunal issued two advices during fiscal year 1998-99. They concerned *Certain Filter Tipped Cigarette Tubes* (Reference No. RE-98-001) and *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (Reference No. RE-98-002). In both cases, the Tribunal concluded that the evidence before the Deputy Minister disclosed a reasonable indication that the dumping had caused material injury or was threatening to cause material injury to a domestic industry. Both cases subsequently proceeded to inquiries under section 42 of SIMA.

The Tribunal completed two inquiries under section 42 of SIMA in fiscal year 1998-99. Inquiry No. NQ-97-002 concerned *Certain Prepared Baby Foods*, and Inquiry No. NQ-98-001 concerned *Certain Stainless Steel Round Bar*. In 1997, the Canadian markets for these products were estimated to be approximately \$60 million and \$30 million respectively.

The inquiry involved dumped imports of certain prepared baby foods by Gerber Products Company (Gerber) of the United States. H.J. Heinz Company of Canada Ltd. (Heinz) of Leamington, Ontario, was the sole Canadian producer. The Director of Investigation and Research, Competition Bureau, was also a party in the inquiry, submitting that the dumping had not caused or threatened to cause material injury. The Tribunal found that dumping from the United States had caused material injury to a domestic industry.

The Tribunal found that Heinz' injury consisted of cost and expense increases, volume losses, price erosion and suppression, and reduced profits. The Tribunal determined that most, if not all, of the increased costs and expenses and volume losses were unrelated to dumping. In particular, the market had declined because of factors such as switches to homemade baby food.

The Tribunal found that Heinz' financial statements for certain prepared baby foods still showed several millions of dollars in reduced operating profits caused by price erosion. The Tribunal examined in depth the factors determining pricing in the grocery and drug retail channels where Heinz and Gerber bid against each other for market share. Several major retail chains, including Loblaw Companies Limited and Shoppers Drug Mart Limited (Shoppers), the largest customers of Heinz and Gerber respectively, renegotiated their supply contracts during the inquiry period. The evidence indicated that Gerber bid very aggressively for this

business and was successful in getting Shoppers' business, including the portion that was previously supplied by Heinz.

The evidence also showed that Gerber's prices were almost always lower than those of Heinz. The Tribunal found that the price erosion experienced by Heinz was primarily due to dumping and that none of the other factors examined, either individually or collectively, satisfactorily explained the price erosion that occurred. The Tribunal also found that the dumping prevented Heinz from recouping some or all of its cost increases through higher prices. Finally, it was evident that Heinz would have lost market share to Gerber if it had not lowered prices to meet the competition from dumping and that any loss of market share would have had substantial consequences on Heinz' financial performance.

***Certain Stainless
Steel Round Bar***

NQ-98-001

*Finding:
Injury*

(September 4, 1998)

The inquiry concerned dumped imports of certain stainless steel round bar from the Federal Republic of Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and the United Kingdom. The sole domestic producer was Atlas Specialty Steels, A Division of Atlas Steels Inc. (Atlas) of Welland, Ontario. The Tribunal found that the dumping had caused material injury to a domestic industry, but excluded certain products from its finding.

Although the Deputy Minister found that exporters in each of the nine named countries had dumped imports, he also determined that the volume of dumped imports from each of four of the countries was less than 3 percent of imports of certain stainless steel round bar from all countries. However, the Deputy Minister determined that the volume of dumped imports from the four countries was not "negligible" because the total volume of dumped imports from the four countries was greater than 7 percent of imports of certain stainless steel round bar from all countries. The Tribunal examined this issue in the inquiry and also concluded that the volume of dumped imports from the four countries was not negligible. Accordingly, the Tribunal analyzed the effects of the dumping from all the named countries on a cumulative basis.

The Tribunal found that the material injury incurred by Atlas during the inquiry period consisted of lost market share, lower sales volumes and prices, revenue losses and lower profitability. With the exception of imports from the Republic of Korea, the Tribunal determined that imports from non-subject countries had not been a significant factor in the injury incurred by Atlas. In the Tribunal's view, the injury was caused primarily by dumping from the subject countries. Their imports grew substantially in 1996 and 1997, and their market share surged by 54 percent in 1997. Immediately after the Deputy Minister initiated a dumping investigation, Atlas recovered a significant part of the market share that it had previously lost.

Inquiries in Progress at the End of 1998-99

The evidence also showed that Atlas's average selling price dropped significantly in 1997. Atlas had reduced its prices by more than 10 percent on average to meet competition from the dumped imports. The data showed that average import prices declined before domestic prices. There was also extensive evidence that the price of imports from the subject countries was driving prices down at particular accounts.

Lower selling prices and, to some extent, the inability to raise prices, as well as lower sales volumes, had a major impact on Atlas's financial results between 1995 and 1997. Sales revenues dropped by 20 percent, while profits plunged by close to 50 percent. Over the period of inquiry, Atlas suffered diminished revenue and profitability, amounting to several millions of dollars, when measured against the levels achieved in 1995.

The Tribunal also concluded that there was evidence that certain stainless steel round bar from the Republic of Korea was being dumped in the Canadian market and that there was a reasonable indication that such dumping threatened to cause injury. The Tribunal advised the Deputy Minister under section 46 of SIMA.

There were three inquiries in progress at the end of fiscal year 1998-99: *Certain Filter Tipped Cigarette Tubes* (Inquiry No. NQ-98-002), *Certain Stainless Steel Round Bar* (Inquiry No. NQ-98-003) and *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (Inquiry No. NQ-98-004). The inquiry on cigarette tubes concerns dumped imports from France. The main domestic producer is CTC Tube Company of Canada Inc. of Montréal, Quebec, and the exporter is GIZEH Raucherbedarf GmbH of Germany. The inquiry on stainless steel bar concerns imports from the Republic of Korea. The sole domestic producer is Atlas Specialty Steels, A Division of Atlas Steels Inc. The inquiry on hot-rolled steel sheet concerns dumped imports from France, Romania, the Russian Federation and the Slovak Republic. The domestic producers are Stelco Inc. of Hamilton, Ontario; Dofasco Inc. of Hamilton; Algoma Steel Inc. of Sault Ste. Marie, Ontario; Ipsco Inc. of Regina, Saskatchewan; and Ispat Sidbec Inc. of Montréal. The importers and exporters that are also parties in the inquiry are Aciers Francosteel Canada Inc., Sollac, Aciers d'Usinor, Thyssen Canada Limited, VSZ Holding, a.s. (East Slovak Iron and Steel Works), Novolipetsk Iron & Steel Corporation, Joint Stock Company "SeverStal" and Magnitogorsk Iron & Steel Works.

Table 1 summarizes the Tribunal's inquiry activities during the fiscal year.

Public Interest Consideration Under Section 45 of SIMA

Where, after a finding of injury or threat of injury, the Tribunal is of the opinion that the imposition of anti-dumping or countervailing duties may not be in the public interest, it reports this opinion to the Minister of Finance with a statement of the facts and reasons that led to its conclusions and recommendations. The Minister of Finance decides whether there should be a reduction in duties.

During the injury inquiry, interested parties may make a request to make representations to the Tribunal on the matter of public interest. Representations may be made after the completion of the inquiry. The Tribunal will then conduct a public interest investigation if it considers that there is a public interest concern worthy of further investigation.

During fiscal year 1998-99, the Tribunal completed a public interest investigation with respect to its finding of material injury in *Certain Prepared Baby Foods* (Inquiry No. NQ-97-002). The Tribunal issued a report to the Minister of Finance (Public Interest Investigation No. PB-98-001), in which it recommended a reduction in the anti-dumping duties on certain prepared baby foods from the United States. After considering all the relevant interests and weighing the evidence before it, the Tribunal concluded that the continued imposition of the anti-dumping duties in the full amount was not in the public interest and recommended that the duties be reduced. The Tribunal's specific import pricing recommendations were contained in a confidential appendix provided to the Minister of Finance. The effect of the Tribunal's recommendation, if implemented by the Minister of Finance, would be a reduction in the duties by about two thirds.

Importer Ruling

Under section 90 of SIMA, the Deputy Minister may request the Tribunal to rule on the question as to which of two or more persons is the importer of goods on which anti-dumping or countervailing duties are payable. If the Tribunal identifies as the importer a person other than the one specified by the Deputy Minister, the Tribunal may reconsider its original finding of material injury.

In fiscal year 1998-99, the Tribunal conducted one inquiry pursuant to section 90 of SIMA. It concerned a request by the Deputy Minister on behalf of D & L Business Canada Ltd. for a ruling on the question of which of two persons was the importer in Canada of fresh garlic originating in or exported from the People's Republic of China. The majority of the Tribunal ruled that the importer in Canada of the said goods was D & L Business Canada Ltd.

Requests for Review

The Tribunal may review its findings of injury or orders at any time, on its own initiative or at the request of the Deputy Minister or any other person or government (subsection 76(2) of SIMA). However, the Tribunal will initiate a review only if it determines that one is warranted, usually on the basis of changed circumstances. In such a review, the Tribunal determines if the changed circumstances are such that the finding or order remains necessary. There were no requests for review in fiscal year 1998-99.

Expiries and Reviews

Subsection 76(5) of SIMA provides that a finding or order expires after five years, unless a review has been initiated. It is Tribunal policy to notify parties nine months prior to the expiry date of a finding or order. If a review is requested, the Tribunal will initiate one if it determines that it is warranted.

During fiscal year 1998-99, the Tribunal issued six notices of expiry. The Tribunal decided that reviews were warranted in each case and initiated reviews. In the case of a notice of expiry issued in fiscal year 1997-98, *Tillage Tools* (Expiry No. LE-97-007), the Tribunal decided that a review was not warranted. The finding expired on November 22, 1998.

The purpose of a review is to determine if anti-dumping or countervailing duties remain necessary. In the case of reviews upon expiry, the Tribunal assesses whether dumping or subsidizing is likely to continue or resume and, if so, whether the dumping or subsidizing is likely to cause material injury to a domestic industry. The Tribunal conducts reviews according to procedures that are similar to those in an inquiry.

Upon completion of a review, the Tribunal issues an order with reasons, pursuant to subsection 76(4) of SIMA. The Tribunal may rescind or continue a finding or order with or without amendment. If the Tribunal continues a finding or order, it remains in force for a further five years unless a review has been initiated and the finding or order is rescinded. If the finding or order is rescinded, imports are no longer subject to anti-dumping or countervailing duties.

Reviews Completed in 1998-99

In fiscal year 1998-99, the Tribunal completed five reviews.

The Tribunal continued its finding in *Preformed Fibreglass Pipe Insulation* (Review No. RR-98-001) respecting dumped imports from the United States. Manson Insulation Inc. of Brossard, Quebec, the sole domestic producer, and three exporters from the United States participated in the review.

The Tribunal rescinded its finding in *Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate* (Review No. RR-97-006) respecting dumped imports from Belgium, the Federative Republic of Brazil, the Czech Republic, Denmark, the Federal Republic of Germany, Romania, the United Kingdom and the former Yugoslav Republic of Macedonia. Algoma Steel Inc., Stelco Inc. and IPSCO Inc., domestic producers accounting for most of Canadian production, and several importers, as well as exporters from the Federative Republic of Brazil, the Czech Republic, the Federal Republic of Germany and Romania, participated in the review.

The Tribunal rescinded its findings in *Certain Cold-rolled Steel Sheet* (Review No. RR-97-007) respecting dumped imports from the Federal Republic of Germany, France, Italy, the United Kingdom and the United States. Stelco Inc., Dofasco Inc., Algoma Steel Inc. and Ispat Sidbec Inc., the domestic producers, and several importers, as well as exporters from the United States, France and the Federal Republic of Germany, participated in the review.

The Tribunal rescinded its finding in *Certain Copper Pipe Fittings* (Review No. RR-97-008) respecting dumped imports by certain exporters in the United States. Cello Products Inc. of Cambridge, Ontario, and Bow Metalics Inc. of Montréal, domestic producers seeking a continuation of the finding, and Streamline Copper & Brass Ltd. of Strathroy, Ontario, a domestic producer seeking the rescission of the finding, as well as two of the US exporters, participated in the review.

The Tribunal rescinded its order in *Paint Brushes and Heads* (Review No. RR-98-002) respecting dumped imports from the People's Republic of China. T.S. Simms & Co. Limited of Saint John, New Brunswick, Nour Trading House Inc. of Waterloo, Ontario, and Pintar Manufacturing, Division of Ladcal Investments Limited of Toronto, Ontario, all supported the continuation of the order.

Reviews in Progress at the End of 1998-99

Five reviews were in progress at the end of the fiscal year. They were the findings in: (1) *Synthetic Baler Twine* (Review No. RR-98-003) respecting dumped imports from the United States; (2) *Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate* (Review No. RR-98-004) respecting dumped imports from Italy, the Republic of Korea, Spain and the Ukraine; (3) *12-gauge Shotshells* (Review No. RR-98-005) respecting dumped imports from the Czech Republic and the Republic of Hungary; (4) *Black Granite Memorials and Black Granite Slabs* (Review No. RR-98-006) respecting dumped and subsidized imports from India; and (5) *Certain Corrosion-resistant Steel Sheet Products* (Review No. RR-98-007) respecting dumped imports from

Australia, the Federative Republic of Brazil, France, the Federal Republic of Germany, Japan, the Republic of Korea, New Zealand, Spain, Sweden, the United Kingdom and the United States.

Table 2 summarizes the Tribunal's review activities during the fiscal year. Table 3 lists Tribunal findings and orders in force as of March 31, 1999.

Judicial or Panel Review of SIMA Decisions

Any person affected by Tribunal findings or orders can request judicial review by the Federal Court of Canada on grounds of alleged denial of natural justice and error of fact or law. In cases involving goods from the United States and Mexico, requests may be made for judicial review by the Federal Court of Canada or for panel review by a binational panel. Table 4 lists the Tribunal's decisions under section 43, 44 or 76 of SIMA that were before the Federal Court of Canada for judicial review or a binational panel for panel review in fiscal year 1998-99.

During the fiscal year, a binational panel affirmed the Tribunal's finding of injury (United States) in the case of *Concrete Panels* (Inquiry No. NQ-96-004).

At the end of the fiscal year, the Federal Court of Canada had not yet heard applications to review the Tribunal's finding of injury in *Certain Stainless Steel Round Bar* (Inquiry No. NQ-98-001) and its orders in *Certain Hot-rolled Carbon Steel Plate* (Review No. RR-97-006) and in *Certain Cold-rolled Steel Sheet* (Review No. RR-97-007). Also at the end of the fiscal year, binational panels had not yet heard the applications to review the Tribunal's finding of injury (United States) in *Certain Prepared Baby Foods* (Inquiry No. NQ-97-002) and its orders (United States) in *Certain Cold-rolled Steel Sheet* (Review No. RR-97-007) and in *Certain Copper Pipe Fittings* (Review No. RR-97-008). Finally, a binational panel had not issued its decision in the application to review the Tribunal's finding of threat of injury (Mexico) in *Certain Hot-rolled Carbon Steel Plate* (Inquiry No. NQ-97-001).

WTO Dispute Resolution

Governments that are members of the WTO may challenge Tribunal injury findings or orders in dumping and countervailing cases to the WTO dispute settlement bodies. This is initiated by inter-governmental consultations. There are no Tribunal findings or orders before the dispute settlement bodies of the WTO.

TABLE 1

**Findings Issued Under Section 43 of SIMA Between April 1, 1998, and March 31, 1999,
and Inquiries Under Section 42 of SIMA in Progress at Year End**

Inquiry No.	Product	Country	Date of Finding	Finding
NQ-97-002	Certain Prepared Baby Foods	United States	April 29, 1998	Injury
NQ-98-001	Certain Stainless Steel Round Bar	Federal Republic of Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and United Kingdom	September 4, 1998	Injury
NQ-98-002	Certain Filter Tipped Cigarette Tubes	France	In progress	
NQ-98-003	Certain Stainless Steel Round Bar	Republic of Korea	In progress	
NQ-98-004	Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products	France, Romania, Russian Federation and Slovak Republic	In progress	

TABLE 2**Orders Issued Under Section 76 of SIMA Between April 1, 1998, and March 31, 1999,
and Reviews in Progress at Year End**

Review No. or Expiry No.	Product	Country	Date of Order	Order
RR-97-006	Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate	Belgium, Federative Republic of Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom and Former Yugoslav Republic of Macedonia	May 5, 1998	Finding rescinded
RR-97-007	Certain Cold-rolled Steel Sheet	Federal Republic of Germany, France, Italy, United Kingdom and United States	July 28, 1998	Findings rescinded
RR-97-008	Certain Copper Pipe Fittings	United States	October 16, 1998	Finding rescinded
RR-98-001	Preformed Fibreglass Pipe Insulation	United States	November 18, 1998	Finding continued
RR-98-002	Paint Brushes and Heads	People's Republic of China	January 18, 1999	Order rescinded
LE-97-007	Tillage Tools	Federative Republic of Brazil	June 22, 1998	Review not warranted
RR-98-003	Synthetic Baler Twine	United States	In progress	
RR-98-004	Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate	Italy, Republic of Korea, Spain and Ukraine	In progress	
RR-98-005	12-gauge Shotshells	Czech Republic and Republic of Hungary	In progress	
RR-98-006	Black Granite Memorials and Black Granite Slabs	India	In progress	
RR-98-007	Certain Corrosion-resistant Steel Sheet Products	Australia, Federative Republic of Brazil, France, Federal Republic of Germany, Japan, Republic of Korea, New Zealand, Spain, Sweden, United Kingdom and United States	In progress	

TABLE 3

Findings and Orders in Force as of March 31, 1999¹

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
NQ-93-003	April 22, 1994	Synthetic Baler Twine	United States	
NQ-93-004	May 17, 1994	Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate	Italy, Republic of Korea, Spain and Ukraine	
NQ-93-005	June 22, 1994	12-gauge Shotshells	Czech Republic and Republic of Hungary	
NQ-93-006	July 20, 1994	Black Granite Memorials and Black Granite Slabs	India	
NQ-93-007	July 29, 1994	Corrosion-resistant Steel Sheet Products	Australia, Federative Republic of Brazil, France, Federal Republic of Germany, Japan, Republic of Korea, New Zealand, Spain, Sweden, United Kingdom and United States	
NQ-94-001	February 9, 1995	Delicious and Red Delicious Apples	United States	
RR-94-002	March 21, 1995	Canned Ham and Canned Pork-based Luncheon Meat	Denmark, Netherlands and European Union	GIC-1-84 (August 7, 1984) RR-89-003 (March 16, 1990)
RR-94-003	May 2, 1995	Women's Footwear	People's Republic of China	NQ-89-003 (May 3, 1990)
RR-94-004	June 5, 1995	Carbon Steel Welded Pipe	Republic of Korea	ADT-6-83 (June 28, 1983) RR-89-008 (June 5, 1990)
RR-94-005	July 5, 1995	Refill Paper	Federative Republic of Brazil	NQ-89-004 (July 6, 1990)

1. This table shows the findings and orders in force. To determine the precise product coverage, refer to the Review No. or Inquiry No. as identified in the first column of the table.

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
RR-94-006	August 25, 1995	Photo Albums with Self-adhesive Leaves and Self-adhesive Leaves	Republic of Korea, People's Republic of China, Singapore, Malaysia, Taiwan, Indonesia, Thailand, Philippines and Hong Kong, China	ADT-474 (January 24, 1975) R-3-84 (August 24, 1984) CIT-18-84 (April 26, 1985) CIT-10-85 (February 14, 1986) CIT-5-87 (November 3, 1987) RR-89-012 (September 4, 1990) NQ-90-003 (January 2, 1991)
RR-94-007	September 14, 1995	Whole Potatoes	United States	ADT-4-84 (June 4, 1984) CIT-16-85 (April 18, 1986) RR-89-010 (September 14, 1990)
NQ-95-001	October 20, 1995	Caps, Lids and Jars	United States	
NQ-95-002	November 6, 1995	Refined Sugar	United States, Denmark, Federal Republic of Germany, Netherlands, United Kingdom and European Union	
RR-95-001	July 5, 1996	Oil and Gas Well Casing	Republic of Korea and United States	CIT-15-85 (April 17, 1986) R-7-86 (November 6, 1986) RR-90-005 (June 10, 1991)
RR-95-002	July 25, 1996	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand, Venezuela and Federative Republic of Brazil	NQ-90-005 (July 26, 1991) NQ-91-003 (January 23, 1992)
RR-96-001	September 12, 1996	Stainless Steel Welded Pipe	Taiwan	NQ-91-001 (September 5, 1991)
NQ-96-002	March 21, 1997	Fresh Garlic	People's Republic of China	
NQ-96-003	April 11, 1997	Polyiso Insulation Board	United States	
RR-96-004	April 21, 1997	Machine Tufted Carpeting	United States	NQ-91-006 (April 21, 1992)
NQ-96-004	June 27, 1997	Concrete Panels	United States	

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
RR-97-001	October 20, 1997	Waterproof Rubber Footwear	People's Republic of China	ADT-2-82 (April 23, 1982) R-7-87 (October 22, 1987) RR-92-001 (October 21, 1992)
NQ-97-001	October 27, 1997	Certain Hot-rolled Carbon Steel Plate	Mexico, People's Republic of China, Republic of South Africa and Russian Federation	
RR-97-002	November 28, 1997	Fresh Iceberg (Head) Lettuce	United States	NQ-92-001 (November 30, 1992)
RR-97-003	December 10, 1997	Bicycles and Frames	Taiwan and People's Republic of China	NQ-92-002 (December 11, 1992)
NQ-97-002	April 29, 1998	Certain Prepared Baby Foods	United States	
RR-98-001	November 18, 1998	Preformed Fibreglass Pipe Insulation	United States	NQ-93-002 (November 19, 1993)
NQ-98-001	September 4, 1998	Certain Stainless Steel Round Bar	Federal Republic of Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and United Kingdom	

TABLE 4

Cases Before the Federal Court of Canada or a Binational Panel Between April 1, 1998, and March 31, 1999

Case No.	Product	Country of Origin	Forum	Date Filed	File No./ Status
NQ-96-004	Concrete Panels	United States	BP	July 21, 1997	CDA-97-1904-01 Decision affirmed
NQ-97-001	Certain Hot-rolled Carbon Steel Plate	People's Republic of China	FC	November 26, 1997	A—856—97 Withdrawn
NQ-97-001	Certain Hot-rolled Carbon Steel Plate	Mexico	BP	November 28, 1997	CDA-97-1904-02
NQ-97-002	Certain Prepared Baby Foods	United States	BP	June 5, 1998	CDA-USA-98-1904-01
NQ-98-001	Certain Stainless Steel Round Bar	Federal Republic of Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and United Kingdom	FC	October 2, 1998	A—591—98
RR-97-006	Certain Hot-rolled Carbon Steel Plate	Belgium, Federative Republic of Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom and Former Yugoslav Republic of Macedonia	FC	June 4, 1998	A—365—98
RR-97-007	Certain Cold-rolled Steel Sheet	Federal Republic of Germany, France, Italy, United Kingdom and United States	BP	September 1, 1998	CDA-USA-98-1904-02
			FC	August 27, 1998	A—483—98/ A—484—98/ A—514—98/ A—515—98
RR-97-008	Certain Copper Pipe Fittings	United States	BP	November 20, 1998	CDA-USA-98-1904-03

Note: FC — Federal Court of Canada
BP — Binational Panel

CHAPTER IV

APPEALS

Introduction

The Tribunal, among its other duties, hears appeals from decisions of the Deputy Minister under the *Customs Act* and SIMA or of the Minister of National Revenue (the Minister) under the *Excise Tax Act*. The Tribunal hears appeals relating to the tariff classification and value for duty of goods imported into Canada and relating to the origin of goods imported from the United States and Mexico under the *Customs Act*. The Tribunal also hears and decides appeals concerning the application, to imported goods, of a Tribunal finding or order concerning dumping or subsidizing and the normal value or export price or subsidy of imported goods under SIMA. Under the *Excise Tax Act*, a person may appeal to the Tribunal the decision of the Minister about an assessment or determination of federal sales tax or excise tax.

Although the Tribunal strives to be informal and accessible, there are certain procedures and time constraints that are imposed by law and by the Tribunal itself in order to provide quality service to the public in an efficient manner. For example, the appeal process is set in motion with a notice (or letter) of appeal, in writing, sent to the Secretary of the Tribunal within the time limit specified in the act under which the appeal is made.

Rules of Procedure

Under the Tribunal's Rules of Procedure, the person launching the appeal (the appellant) normally has 60 days to submit to the Tribunal a document called a "brief." Generally, the brief states under which act the appeal is launched, gives an indication of the points at issue between the appellant and the Minister or Deputy Minister (in legal terminology, the Minister or the Deputy Minister is called the respondent) and states why the appellant believes that the respondent's decision is incorrect. A copy of the brief must also be given to the respondent.

The respondent must also comply with time and procedural constraints. Normally, within 60 days after having received the appellant's brief, the respondent must provide the Tribunal and the appellant with a brief setting forth Revenue Canada's position. Once these formalities are out of the way, the Secretary of the Tribunal contacts both parties in order to schedule a hearing. Hearings are generally conducted in public, before Tribunal members. Taking into account the complexity and precedential nature of the matter at issue, certain appeals, especially those under the *Customs Act*, can be heard before one member of the Tribunal.

Hearings

An individual may present a case before the Tribunal in person, or be represented by legal counsel or by any other representative. The respondent is generally represented by counsel from the Department of Justice.

Hearing procedures are designed to ensure that the appellant and the respondent are given a full opportunity to make their case. They also enable the Tribunal to have the best information possible to make a decision. As in a court, the appellant and the respondent can call witnesses, and these witnesses are questioned under oath or affirmation by the opposing parties, as well as by Tribunal members, in order to test the validity of their evidence. When all the evidence is gathered, parties may present arguments in support of their respective position.

The option of a file hearing is also offered to the appellant. Where a hearing is not required, the Tribunal may dispose of the matter on the basis of the written documentation before it. Rule 25 of the Tribunal's Rules of Procedure allows the Tribunal to proceed in this manner. Before deciding to proceed in this manner, the Tribunal requires that the appellant and respondent consent to disposing of the appeal by way of a file hearing and file with the Tribunal an agreed statement of facts in addition to their submissions. The Tribunal then publishes a notice of the file hearing in the *Canada Gazette* so that other interested persons can make their own views known.

The Tribunal also hears appeals by way of electronic transmission, either by teleconference or videoconference.

Teleconference hearings are used mainly to dispose of preliminary motions and jurisdictional issues where witnesses are not required to attend or give evidence.

Videoconference hearings are used as an alternative to holding hearings in remote locations across Canada or requiring parties from outside Ontario or Quebec to present themselves at the Tribunal's premises in Ottawa. This option of a videoconference hearing is generally used where there are no issues of credibility. The procedures are very similar to hearings held before the Tribunal at its premises. However, the Tribunal requires that written materials, exhibits, aids to arguments, etc., be filed with the Tribunal prior to the videoconference hearing.

Usually, within 120 days of the hearing, the Tribunal issues a decision on the matters in dispute, including the reasons for its decision.

If the appellant, the respondent or an intervener disagrees with the Tribunal's decision, the decision can be appealed to the Federal Court of Canada.

Appeals Considered in the Last Fiscal Year

During fiscal year 1998-99, the Tribunal heard 48 appeals of which 44 related to the *Customs Act*, 3 to the *Excise Tax Act* and 1 to SIMA. Decisions were issued in 90 cases, of which 30 were heard during fiscal year 1998-99.

Decisions on Appeals*

Act	Allowed	Allowed in Part	Dismissed	Dismissed in Part	Total
<i>Customs Act</i>	26	27	23	1	77
<i>Excise Tax Act</i>	2	-	9	-	11
SIMA	-	-	1	-	1

* Reference No. AP-98-055 is excluded.

Table 1 of this chapter lists the appeal decisions rendered in fiscal year 1998-99.

Summary of Selected Decisions

The following are summaries of a representative sample of significant decisions in appeals under section 67 of the *Customs Act*. These summaries have been prepared for general information purposes only and have no legal status.

Honda Canada Inc. v. The Deputy Minister of National Revenue

AP-97-111

*Decision:
Appeal dismissed
(January 11, 1999)*

This was an appeal pursuant to subsection 67(1) of the *Customs Act* involving the tariff classification of Honda H2013SC lawn tractors manufactured by Honda Inc. in the United States and imported by the appellant, a wholly owned subsidiary of Honda Inc.

The goods in issue originally entered as tractors under tariff item No. 8701.90.19 of Schedule I to the *Customs Tariff*. The Tribunal considered whether the goods in issue were properly classified under tariff item No. 8433.11.00 as powered mowers for lawns, parks or sports grounds, with the cutting device rotating in a horizontal plane, as determined by the respondent, or should have been classified under tariff item No. 8701.90.19 as other tractors, as claimed by the appellant. There was one intervener in this case, MTD Products Ltd. (MTD), which appeared in support of the respondent.

The appeal was dismissed. The Tribunal was of the view that the evidence showed that the goods in issue are constructed essentially for use with mower decks for mowing lawns. The Tribunal was also of the view that the goods in issue came within the wording of heading No. 84.33 and the relevant Section and Chapter Notes.

In arriving at its conclusion, the Tribunal found it useful to compare the goods in issue with those in *Steen Hansen Motorcycles Ltd. v. The Deputy Minister of National Revenue* in which the Tribunal concluded that various models of lawn tractors manufactured by The Murray Ohio Manufacturing Co. are not constructed essentially for pushing many different types of implements, but rather are constructed essentially for use with mower decks for cutting grass and come within the wording of heading No. 84.33 and the relevant Section and Chapter Notes. This comparison showed that the goods share very similar characteristics in terms of, for instance, weight, horsepower and tire size. While these characteristics may allow the goods in issue to operate, to some degree, with a snowblower attachment, this does not establish that they were constructed essentially for such a purpose. Furthermore, the Tribunal was of the view that characteristics of the goods in issue referenced above are quite different from those of the commercial machines that it considered in *Marubeni Canada Ltd. v. The Deputy Minister of National Revenue* and *Ford New Holland Canada Ltd. v. The Deputy Minister of National Revenue* in terms of, for instance, size, weight, horsepower and the market segment to which they are sold. Moreover, the manner in which appliances are put on and taken off the goods in issue contrasts greatly with the easy front-end hitch mechanism used in the commercial tractors considered by the Tribunal in *Marubeni* and *Ford New Holland*. In addition, the evidence submitted by other producers about their sales of snowblowers used with similar machines did not show significant use of those machines for purposes other than mowing lawns. In any event, the evidence about use did not approach the amount of use of different appliances reflected in *Marubeni* or *Ford New Holland*.

***Rigel Shipping
Canada Inc. v. The
Deputy Minister of
National Revenue***

AP-97-045

Decision:
Appeal allowed in part
(September 15, 1998)

This was an appeal under section 67 of the *Customs Act* in which the Tribunal considered the appraisal of the value for duty on three vessels, the *Emsstern* and the *Elbestern* which, when ordered in 1991, cost US\$18,238,460 each, and the *Jadestern* which, when ordered later in 1991, cost US\$19,140,460.

The vessels were built by MTW Schiffswerft GmbH (MTW) of Wismar, Germany, and delivered in 1992 (the *Emsstern* and the *Elbestern*) and early 1993 (the *Jadestern*) to Ultramar Ltd. (Ultramar), a Canadian refiner and marketer of petroleum products, primarily in Eastern Canada. In order to move its products from the refinery to the market, it requires access to tanker ships that have the capacity and ability to carry petroleum products in the St. Lawrence River and along Canada's east coast. In 1992, Ultramar contacted a ship broker and gave him instructions to search the world market to find tankers which would be suitable for its needs. He identified three chemical and petroleum tankers under construction by MTW (the Rigel vessels).

The ship broker met with representatives from Revenue Canada to decide upon the method of calculating the value for duty. Following a series of

communications, it was agreed that the usual method for calculating the value for duty, i.e. the transaction value method in section 48 of the *Customs Act*, would not be appropriate because, as the vessels were coming into Canada pursuant to a charter party agreement, there was no sale for export to Canada. Consequently, Revenue Canada decided, and the appellant agreed, to use the residual method found in section 53 of the *Customs Act*. In order to determine this value, Revenue Canada directed Ultramar to average the values indicated by two appraisals of the Rigel vessels. The two appraisals were averaged, and duty was paid on the amount of US\$11,280,000 for the *Emsstern* and the *Elbestern*, which were imported into Canada in November 1993, and on the amount of US\$12,150,000 for the *Jadestern*, which was imported into Canada in March 1994.

Following receipt of a complaint by the Canadian Shipowners Association, Revenue Canada re-appraised the value of the Rigel vessels. On April 14, 1997, the respondent issued re-appraised values of the vessels pursuant to subsection 63(3) of the *Customs Act* in the following amounts: US\$15,370,000 each for the *Emsstern* and the *Elbestern*; and US\$15,760,000 for the *Jadestern*.

The appeal was allowed in part. The Tribunal concluded that the respondent's calculation of the value for duty of the Rigel vessels was, in part, incorrect. The Tribunal was of the view that section 67 of the *Customs Act* allows it to substitute what it believes to be the correct value for duty and that it is not simply limited to accepting or rejecting the respondent's determination. Taking into account all of the evidence, the Tribunal concluded that the correct values on the date of importation were US\$14,860,926 each for the *Emsstern* and the *Elbestern* and US\$14,807,000 for the *Jadestern*. It was these amounts on which the applicable duty should have been paid.

**Atomic Ski Canada
Inc. and Wilson
Sports Canada v. The
Deputy Minister of
National Revenue**

AP-97-030 and
AP-97-031

Decision:
Appeals allowed
(June 8, 1998)

These were appeals under section 67 of the *Customs Act* in which the Tribunal considered the tariff classification of plastic shells for in-line skates. The issue in these appeals was whether the plastic shells for in-line skates were properly classified under tariff item No. 9506.70.12 as roller skates or, alternatively, under tariff item No. 6402.19.90 as other sports footwear, as determined by the respondent, or should have been classified under tariff item No. 6406.99.90 as other parts of footwear, as claimed by the appellants.

In allowing the appeals, the Tribunal concluded that, if it was possible to find that, absent the skates, a product could still be considered to have the essential character of roller skates and, therefore, be classified in heading No. 95.06 as roller skates, as argued by the respondent, the Explanatory Notes would not expressly exclude from that heading roller skates without the skates attached.

The Tribunal accepted that the goods in issue are committed for use as components in skating boots and, in turn, in-line skates. However, the Tribunal concluded that the goods in issue, presented on their own, without linings or buckles, lacked one of the principal features of footwear, that is, the ability to be worn as a covering for the foot and part of the leg, and could not be classified, pursuant to Rule 2 (a) of the *General Rules for the Interpretation of the Harmonized System*, as unassembled footwear with outer soles and uppers of rubber or plastics or, in this case, as unassembled skating boots, having the essential character of such footwear. As a result, the Tribunal was not persuaded that the goods in issue could be classified under tariff item No. 6402.19.90 as other sports footwear. Having determined that the goods in issue did not have the essential character of skating boots and could not, therefore, be classified under tariff item No. 6402.19.90, the Tribunal had further to determine whether the goods in issue could be classified under tariff item No. 6406.99.90 as other parts of footwear, as claimed by the appellants. The Tribunal was persuaded that both the skating boots, absent the skates, and the finished in-line skates met the definitions of “footwear.” It observed that the Explanatory Notes to heading No. 64.05 provide that the heading “**excludes** assemblies of parts (e.g., uppers, whether or not affixed to an inner sole) not yet constituting nor having the essential character of footwear as described in headings 64.01 to 64.05 (**heading 64.06**).” The Tribunal interpreted the Explanatory Notes to mean that, if the Tribunal found that the goods in issue were parts of the finished skating boots, which are covered by heading No. 64.02, then they should be classified in heading No. 64.06. In considering whether the goods in issue constituted parts of skating boots or in-line skates, the Tribunal observed that there was no universal test for determining whether a product was a part, and each case had to be determined on its own merits. The Tribunal noted that, in the past, it has considered that the following factors typically applied in the assessment of whether a product is a part: (1) whether the product is essential to the operation of another product; (2) whether the product is a necessary and integral component of the other product; (3) whether the product is installed in the other product; and (4) common trade usage and practice applied to the goods in issue. In the Tribunal’s view, the goods in issue were essential to and necessary and integral components of in-line skating boots. As such, the Tribunal was satisfied that the goods in issue should be classified under tariff item No. 6406.99.90 as other parts of footwear, namely, skating boots.

On August 10, 1998, the Deputy Minister, pursuant to section 70 of the *Customs Act*, asked the Tribunal to render an opinion with respect to:

- the tariff classification of butteroil blends comprising less than 50 percent butteroil and more than 50 percent sugar (sucrose); and

Reference under Section 70 of the *Customs Act*

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- the tariff classification of blends of butteroil and glucose and blends of butteroil and processing solids, containing less than 50 percent by weight of dairy content.

The Tribunal issued a notice of review (Reference No. AP-98-055) of the tariff classification of butteroil blends on August 18, 1998.

Briefs were filed by parties in favour of a change in the tariff classification of the goods in issue, as well as by those opposed to a change in the tariff classification. A public hearing relating to this reference was held from January 26 to 29, 1999. In the context of this reference, the Tribunal dealt with the preliminary issue of whether, in a reference under section 70 of the *Customs Act*, the Tribunal's disposition is a non-binding opinion, which the Deputy Minister may elect to follow or not, or a decision with the same force and effect as a decision made in an appeal under section 67. The Tribunal came to the view that proceedings which come to it by way of a reference pursuant to section 70 are in the nature of an appeal and that it has jurisdiction to issue an order, finding or declaration with the full force and effect of any other decision that it issues in an appeal under section 67.

On March 26, 1999, the Tribunal rendered its majority decision that butteroil blends comprising less than 50 percent butteroil and more than 50 percent sugar (sucrose) are classifiable under tariff item No. 2106.90.95 and that blends comprising less than 50 percent butteroil and more than 50 percent glucose are also classifiable under tariff item No. 2106.90.95. As for the classification of blends of butteroil and processing solids, the Tribunal came to the view that it was not possible to reach a definitive view on the classification, in light of the indeterminate and variable nature of ingredients which may go to make up the processing solids portion of such blends.

TABLE 1

Appeal Decisions Rendered Under Section 67 of the *Customs Act*, Section 81.27 of the *Excise Tax Act* and Section 61 of SIMA Between April 1, 1998, and March 31, 1999

Appeal No.	Appellant	Date of Decision	Decision
Customs Act			
AP-97-073	Atlas Alloys, Division of Rio Algom Limited	April 23, 1998	Dismissed
AP-97-059	Canadian Fracmaster Ltd.	May 29, 1998	Dismissed
AP-97-030 and AP-97-031	Atomic Ski Canada Inc. and Wilson Sports Canada	June 8, 1998	Allowed
AP-93-392, AP-93-393, AP-94-001, AP-94-002, AP-94-007, AP-94-019, AP-94-020, AP-94-026, AP-94-028, AP-94-030, AP-94-033, AP-94-043, AP-94-055, AP-94-060, AP-94-064, AP-94-068, AP-94-077, AP-94-079, AP-94-097 and AP-96-118	Asea Brown Boveri Inc.	June 10, 1998	Allowed in part
AP-96-228	Hibernia Management and Development Company Ltd.	June 10, 1998	Allowed in part
AP-97-083 and AP-97-101	Nailor Industries Inc.	July 13, 1998	Dismissed
AP-97-013	General Mills Canada, Inc.	July 21, 1998	Allowed
AP-97-002	Flora Manufacturing & Distributing Ltd.	July 24, 1998	Allowed
AP-97-012	General Mills Canada, Inc.	July 24, 1998	Dismissed
AP-95-182	Leeds Neckwear Inc. and Leeds International Inc.	July 28, 1998	Allowed
AP-96-096 to AP-96-103	Style-Kraft Sportswear Limited	July 28, 1998	Allowed
AP-97-056	P & S Filtration Inc.	July 29, 1998	Allowed
AP-97-057	Zellers Inc.	July 29, 1998	Allowed
AP-97-110 and AP-97-113	Nicholson Equipment Ltd.	September 2, 1998	Allowed
AP-97-017, AP-97-053, AP-97-102 and AP-97-118	Pet Valu Canada Inc.	September 14, 1998	Allowed in part
AP-97-045	Rigel Shipping Canada Inc.	September 15, 1998	Allowed in part
AP-97-052	Flora Manufacturing & Distributing Ltd.	September 24, 1998	Dismissed
AP-97-058	Flora Manufacturing & Distributing Ltd.	September 24, 1998	Allowed
AP-96-079, AP-96-087 and AP-96-095	Advance Engineered Products Ltd.	September 25, 1998	Dismissed
AP-97-010	Hilary's Distribution Ltd.	September 25, 1998	Allowed
AP-97-038	Fonora Textile Inc.	September 25, 1998	Allowed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-97-048, AP-97-081 and AP-97-082	Cooper Industries (Canada) Inc. and Cooper Cameron Ltd.	September 25, 1998	Allowed
AP-97-029	Entrelec Inc.	September 28, 1998	Dismissed
AP-97-078	Jonic International Inc.	September 28, 1998	Dismissed
AP-97-122	Canadian Tire Corporation, Limited	September 29, 1998	Dismissed
AP-97-140	Manju Bhogal	October 7, 1998	Dismissed
AP-97-116	Gillette Canada Inc.	November 20, 1998	Dismissed
AP-97-033	Technical Glass Products	November 25, 1998	Dismissed
AP-97-100	Brother International Corporation (Canada) Ltd.	November 27, 1998	Dismissed in part
AP-97-117	Sanofi Canada Inc.	December 18, 1998	Dismissed
AP-97-070	Les Industries et Équipements Laliberté Ltée	December 23, 1998	Dismissed
AP-98-006	Burlodge Canada Ltd.	January 7, 1999	Allowed
AP-97-111	Honda Canada Inc.	January 11, 1999	Dismissed
AP-97-043	Douglas Anderson and Creed Evans	January 13, 1999	Dismissed
AP-97-062	Zellers Limited	February 8, 1999	Allowed
AP-98-007 and AP-98-010	Richards Packaging Inc. and Duopac Packaging Inc.	February 10, 1999	Dismissed
AP-95-097	Flextube Inc.	February 19, 1999	Allowed in part
AP-96-057	Catherine Roozen	March 1, 1999	Dismissed
AP-97-104	Transilwrap of Canada, Ltd.	March 3, 1999	Dismissed
AP-98-049	Soprema Inc.	March 5, 1999	Allowed

Excise Tax Act

AP-94-352	Raymond Rioux Distribution	June 15, 1998	Dismissed
AP-96-217	Hi-Grove Holdings Ltd.	July 27, 1998	Allowed
AP-95-130	United Power Ltd.	August 25, 1998	Dismissed
AP-97-072	Kellogg Canada Inc.	August 28, 1998	Dismissed
AP-97-027	Movado Group of Canada, Inc.	August 31, 1998	Allowed
AP-90-156, AP-90-157 and AP-91-037 to AP-91-040	North American Steel Equipment Company Ltd.	September 25, 1998	Dismissed

Special Import Measures Act

AP-96-083	Jarvis Imports and Sales Ltd.	December 7, 1998	Dismissed
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TABLE 2

Tribunal Decisions Appealed to the Federal Court of Canada Between April 1, 1998, and March 31, 1999, and Pending as of March 31, 1999¹

Appeal No.	Appellant	Federal Court No.
AP-96-208 and AP-97-009	Philips Electronics Ltd.	A—230—98
AP-97-002	Flora Manufacturing & Distributing Ltd.	A—617—98
AP-97-010	Hilary's Distribution Ltd.	A—632—98
AP-97-029	Entrelec Inc.	A—755—98
AP-97-048, AP-97-081 and AP-97-082	Cooper Industries (Canada) Inc. and Cooper Cameron Ltd.	A—702—98
AP-97-052	Flora Manufacturing & Distributing Ltd.	A—720—98
AP-97-058	Flora Manufacturing & Distributing Ltd.	A—633—98
AP-97-078	Jonic International Incorporated	A—765—98
AP-97-100	Brother International Corporation (Canada) Ltd.	A—81—99

1. The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not participate in appeals to the Federal Court of Canada, it is unable to confirm that the list contains all Tribunal decisions appealed to the Federal Court of Canada between April 1, 1998, and March 31, 1999.

TABLE 3

Decisions of the Federal Court of Canada Rendered Between April 1, 1998, and March 31, 1999¹

Appeal No.	Appellant	Federal Court No.	Outcome	Date
AP-91-082	Suntech Optics Inc.	T—2387—92	Appeal dismissed	January 14, 1999
AP-91-120	BASF Coatings & Inks Canada Ltd.	T—1092—93	Appeal allowed	April 6, 1998
AP-92-294	Shafer Valve Co. of Canada Ltd.	A—344—96	Appeal dismissed	April 28, 1998
AP-93-016	Therm-O-Comfort Co. Ltd.	T—1361—94	Appeal dismissed	July 31, 1998
AP-94-102	I.D. Foods Superior Corp.	A—536—95	Appeal quashed	April 29, 1998
AP-94-148	Suncor Inc.	T—699—97	Appeal allowed	July 17, 1998
AP-94-167	Security Card Systems Inc.	T—2728—95	Appeal allowed in part	July 3, 1998
AP-94-327	Double N Earth Movers Ltd.	T—698—97	Appeal allowed	July 17, 1998
AP-95-079	J.B. Multi-National Trade Inc.	A—865—96	Appeal discontinued	September 3, 1998
AP-95-123	PMI Food Equipment Group Canada, A Division of Premark Canada Inc.	A—198—97/	Appeal discontinued	January 18, 1999
		A—283—97		
AP-95-126 and AP-95-255	Mattel Canada Inc.	A—291—97/	Appeals allowed	January 13, 1999
		A—292—97		
AP-95-129	Carol Cable Company	A—617—96	Appeal dismissed	October 22, 1998
AP-95-170	Nalley's Canada Limited	A—47—97	Appeal dismissed	November 4, 1998
AP-95-182	Leeds Neckwear Inc. and Leeds International Inc.	A—624—98	Appeal discontinued	February 10, 1999
AP-95-197 to AP-95-202 and AP-95-206 to AP-95-212	Nike Canada Ltd.	A—905—97	Appeal allowed	January 13, 1999
AP-95-259	Paccar of Canada Ltd.	T—480—97	Appeal allowed	May 8, 1998
AP-96-016	Trudell Medical Marketing Limited	A—695—97	Appeal discontinued	November 3, 1998
AP-96-048	Canadian Optical Supply Company Ltd.	A—368—97	Appeal dismissed	February 22, 1999
AP-96-054	Sunbeam Corporation (Canada) Limited	A—342—97	Appeal dismissed	April 1, 1998
AP-96-096 to AP-96-103	Style-Kraft Sportswear Limited	A—625—98	Appeal discontinued	February 11, 1999
AP-96-205	Formica Canada Inc.	A—98—98	Appeal dismissed	February 25, 1999
AP-96-241 and AP-96-242	C.A.S. Sports International Inc. and Atomic Ski Canada Inc.	A—108—98	Appeal discontinued	March 22, 1999
AP-97-082	Cooper Industries (Canada) Inc.	A—702—98	Appeal discontinued	March 23, 1999

1. The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not participate in appeals to the Federal Court of Canada, it is unable to confirm that the list contains all appeals that were decided between April 1, 1998, and March 31, 1999.

CHAPTER V

ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES

Introduction

The CIIT Act contains broad provisions under which the government or the Minister of Finance may ask the Tribunal to conduct an inquiry on any economic, trade, tariff or commercial matter. In an inquiry, the Tribunal acts in an advisory capacity, with powers to conduct research, receive submissions and representations, find facts, hold public hearings and report, with recommendations as required, to the Government or the Minister of Finance.

Dairy Blends

On June 30, 1998, the Tribunal submitted to the Government its report on the importation of dairy product blends outside the coverage of Canada's tariff-rate quotas. The report completed a public inquiry which was referred to the Tribunal on December 17, 1997, by the Governor in Council on the recommendation of the Minister of Finance, the Minister of Agriculture and Agri-Food and the Minister for International Trade.

The initiative for the inquiry came from increasing concerns of Canadian dairy farmers about imports of dairy product blends. Industry representatives requested that the Government of Canada address their particular concerns relating to butteroil/sugar blends.

In 1995, when Canada implemented its WTO commitments arising out of the Uruguay Round of multilateral trade negotiations, import quotas in support of supply management were converted into tariff-rate quotas. The butteroil blends which were at the centre of the Tribunal's inquiry were not covered by the former import quotas and were not subject to tariff-rate quotas.

The Tribunal noted that there were a number of factors that influenced the demand for imported dairy product blends in the domestic market. The most important of these factors was the cost savings that producers of ice cream and processed cheese achieve by using imported butteroil blends. Other factors included the security of supply, competition in the ice cream industry and certain technical benefits.

The Tribunal observed that the use of butteroil blends increased rapidly in the period from 1994 to 1996 and then almost doubled in 1997. In 1997, about 6.3 million kilograms of the imported butteroil blends were used in the manufacture of ice cream and processed cheese. This corresponded to approximately 3.1 million kilograms of butterfat. Expressed as a percentage of overall milk production in Canada in 1997, the imports were equivalent to about 1 percent of the butterfat produced for the fluid and industrial milk markets.

The Tribunal expected that the use of imported butteroil blends, to replace domestic butterfat, would increase in the years ahead, although at a slower pace than in recent years. Compared to a 1997 replacement level of 12 percent, the Tribunal considered that up to a maximum of 25 percent of the butterfat in ice cream and the replaceable butterfat in processed cheese could be supplied by imported butteroil blends.

As requested in its terms of reference, the Tribunal examined the domestic market for imports of dairy product blends, as well as their impact on the Canadian dairy industry. It also reviewed the legal, technical, regulatory and commercial considerations relevant to these imports. Finally, it identified options for the dairy farmers and the Government to deal with any problems raised by imports of butteroil blends. The Tribunal found that the following options, in addition to the status quo, were consistent with Canada's international rights and obligations:

- an appeal to the Tribunal by the dairy farmers of the classification of butteroil blends;
- a safeguard inquiry by the Tribunal pursuant to a complaint by the dairy farmers or a government reference;
- a special class price for butterfat for ice cream and processed cheese;
- a special class price for butterfat for domestic butteroil blends;
- compensation of the dairy farmers for their income losses; and
- a new tariff item for butteroil blends with a different tariff treatment.

The Tribunal came to the conclusion that none of the options available for addressing any problems raised by imports of butteroil blends were without cost, either to the dairy farmers or the Government. There are economic consequences for the dairy farmers of an open border for butteroil blends. The types of action available to the Government and the dairy farmers, however, are constrained by the rules of international trade. These same rules, which apply equally to all Members of the WTO, provide dairy farmers with increased certainty and protection. As well, the rules provide several avenues by which dairy farmers may seek relief from the effects of imported butteroil blends.

**Textile
Reference**

Pursuant to a reference from the Minister of Finance dated July 6, 1994, as amended on March 20 and July 24, 1996, and on November 26, 1997, the Tribunal was directed to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister of Finance.

**Scope of the
Reference**

A domestic producer may apply for tariff relief on an imported textile input used, or proposed to be used, in its manufacturing operations. The textile inputs for which tariff relief may be requested are the fibres, yarns and fabrics of Chapters 51, 52, 53, 54, 55, 56, 58, 59 and 60; certain monofilaments or strips and textile and plastic combinations of Chapter 39; rubber thread and textile and rubber combinations of Chapter 40; and products of textile glass fibres of Chapter 70 of the schedule to the *Customs Tariff*. Since July 24, 1996, and at least until July 1, 1999, the following yarns are not included in the textile reference:

Knitting yarns, solely of cotton or solely of cotton and polyester staple fibres, measuring more than 190 decitex, of Chapter 52 or subheading No. 5509.53 other than those used to make sweaters, having a horizontal self-starting finished edge and the outer surfaces of which are constructed essentially with 9 or fewer stitches per 2 centimetres (12 or fewer stitches per inch) measured in the horizontal direction.

**Types of Relief
Available**

The tariff relief that may be recommended by the Tribunal to the Minister of Finance ranges from the removal or reduction of tariffs on one or several, partial or complete, tariff lines, textile- and/or end-use-specific tariff provisions. In the case of requests for tariff relief on textile inputs used in the manufacture of women's swimsuits, co-ordinated beachwear and co-ordinated accessories only, the recommendation could include company-specific relief. The recommendation could be for tariff relief for either a specific or an indeterminate period of time. However, the Tribunal will only recommend tariff relief that is administrable on a cost-effective basis.

Process

Domestic producers seeking tariff relief must file a request with the Tribunal. Producers must file with the request either samples of the textile input for which tariff relief is being sought or a National Customs Ruling from Revenue Canada covering the input. If the Tribunal determines that the request is properly documented, it will conduct an investigation to determine if it should recommend tariff relief.

**Filing and
Notification of a
Request**

Upon receipt of a request for tariff relief, and before commencement of an investigation, the Tribunal issues a brief electronic notice on its Web site announcing the request. The minimum period of time for the notification of a request before an investigation is commenced is 30 days.

This notification is designed to increase transparency, identify potential deficiencies in the request, avoid unnecessary investigations, provide an opportunity for the domestic textile industry to contact the requester and agree on a reasonable domestic source of supply, inform other users of identical or substitutable textile inputs, prepare the domestic industry to respond to subsequent investigation questionnaires and give associations advance time for planning and consultation with their members.

Investigations

When the Tribunal is satisfied that a request is properly documented, it commences an investigation. A notice of commencement of investigation is sent to the requester, all known interested parties and any appropriate government department or agency, such as Revenue Canada, the Department of Foreign Affairs and International Trade, the Department of Industry and the Department of Finance. The notice is also published in the *Canada Gazette*.

In any investigation, interested parties include domestic producers, certain associations and other persons who are entitled to be heard by the Tribunal because their rights or pecuniary interests may be affected by the Tribunal's recommendations. Interested parties are given notice of the request and can participate in the investigation. Interested parties include competitors of the requester, suppliers of goods that are identical to or substitutable for the textile input and downstream users of goods produced from the textile input.

To prepare a staff investigation report, the Tribunal staff gathers information through such means as plant visits or questionnaires. Information is obtained from the requester and interested parties, such as a domestic supplier of the textile input, for the purpose of providing a basis for determining whether the tariff relief sought will maximize net economic gains for Canada.

In normal circumstances, a public hearing is not required, and the Tribunal will dispose of the matter on the basis of the full written record, including the request, the staff investigation report and all submissions and evidence filed with the Tribunal.

The procedures developed for the conduct of the Tribunal's investigations envisage the full participation of the requester and all interested parties. A party, other than the requester, may file submissions, including evidence, in response to

the properly documented request, the staff investigation report and any information provided by a government department or agency. The requester may subsequently file submissions with the Tribunal in response to the staff investigation report and any information provided by a government department or agency or other party.

Where confidential information is provided to the Tribunal, such information falls within the protection of the CITT Act. Accordingly, the Tribunal will only distribute confidential information to counsel who are acting on behalf of a party and who have filed a declaration and undertaking.

**Recommendations
to the Minister**

The Tribunal will normally issue its recommendations, with reasons, to the Minister of Finance within 120 days from the date of commencement of the investigation. In exceptional cases, where the Tribunal determines that critical circumstances exist, the Tribunal will issue its recommendations within an earlier specified time frame which the Tribunal determines to be appropriate. The Tribunal will recommend the reduction or removal of customs duties on a textile input where it will maximize net economic gains for Canada.

Request for Review

Where the Minister of Finance has made an order for tariff relief pursuant to a recommendation of the Tribunal, certain domestic producers may make a request to the Tribunal to commence an investigation for the purpose of recommending the renewal, amendment or termination of the order. A request for the amendment or termination of the order should specify what changed circumstances justify such a request.

Review on Expiry

Where the Minister of Finance has made an order for tariff relief subject to a scheduled expiry date, the Tribunal will, before the expiry date, issue a formal notice that the tariff relief provided by the order will expire unless the Tribunal issues a recommendation that tariff relief should be continued and the Minister of Finance implements the recommendation. The notice invites interested parties to file submissions for or against continuation of tariff relief.

If no opposition to the continuation of tariff relief is received, upon receipt of submissions and information supporting the request for continuation of tariff relief, the Tribunal may decide to recommend the continuation of tariff relief. Conversely, if no request for continuation of tariff relief is submitted, the Tribunal may decide to recommend the termination of tariff relief. If it appears that a more complete review is warranted, the Tribunal will conduct an investigation to consider whether all relevant factors which led it to recommend tariff relief

	<p>continue to apply and whether extending tariff relief under such conditions would continue to provide net economic benefits for Canada.</p>
Annual Status Report	<p>In accordance with the terms of reference received by the Tribunal directing it to conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their manufacturing operations, the Tribunal provided the Minister of Finance, on February 11, 1999, with its fourth annual status report on the investigation process. The status report covered the period from October 1, 1997, to September 30, 1998.</p>
Recommendations Submitted During 1998-99	<p>During fiscal year 1998-99, the Tribunal issued 12 reports to the Minister of Finance which related to 17 requests for tariff relief. In addition, the Tribunal issued 3 reports further to reviews of recommendations that were previously issued. At year end, 15 requests were outstanding, of which investigations had been commenced in respect of 5 requests. Table 1 at the end of this chapter summarizes these activities.</p>
Recommendations in Place	<p>By the end of fiscal year 1998-99, the Government had implemented 59 recommendations by the Tribunal, of which 53 are still subject to tariff relief orders. Table 4 provides a summary of recommendations currently implemented.</p> <p>The implementation of Tribunal recommendations is made by adding new tariff items to the <i>Customs Tariff</i>. During 1998-99, these tariff items covered imports worth \$180 million (estimated) and provided tariff relief worth \$25 million (estimated), representing an increase of approximately 30 percent over 1997-98.</p> <p>A summary of a representative sample of Tribunal recommendations issued during the fiscal year follows.</p>
<p><i>Phantom Industries Inc.</i></p> <p><i>TR-97-005</i></p> <p><i>Recommendation: Tariff relief not granted (May 8, 1998)</i></p>	<p>The Tribunal recommended to the Minister of Finance that tariff relief on importations of gimped yarns, consisting of a five-filament nylon yarn not greater than 15 decitex wound spirally around an elastomeric yarn (spandex), for use in the manufacture of women's hosiery, not be granted. In its report, the Tribunal indicated that there was no disagreement among the parties that there was production in Canada of gimped yarns that were identical, in terms of yarn construction, to those for which tariff relief was requested and that the debate centered on the performance problems of the yarns supplied by the domestic producer, Rubyco (1987) Inc. (Rubyco), to Phantom Industries Inc. (Phantom)</p>

and on the efforts that Phantom made to communicate these problems to Rubyco. The Tribunal found that, while there may well have been some operating differences between the domestic and the imported gimped yarns, Phantom had not demonstrated that sufficient efforts had been made to obtain domestic supply, nor that domestic yarns could not be substituted for the imported yarns. Under the circumstances, the Tribunal was unable to find that granting tariff relief would provide net economic gains to Canada.

Doubletex

TR-95-013A

*Recommendation:
Indeterminate tariff
relief
(December 21, 1998)*

The Tribunal recommended to the Minister of Finance that tariff relief on importations of woven fabric of 100 percent cotton, unbleached, bleached for dyeing only, of yarns with a twist of 1,050 turns per metre or more in the warp and/or the weft, for use by textile converters only to produce a dyed and finished fabric for the apparel industry, be granted for an indeterminate period of time. In its report, the Tribunal noted that Consoltex Inc. was the sole domestic producer opposed to the request and that the samples that it submitted were not fully substitutable for the finished fabrics made by Doubletex. The Tribunal concluded that, while some costs would be incurred by Consoltex Inc. should tariff relief be granted, these costs would be far outweighed by the benefits that would accrue to domestic converters, such as Doubletex.

Distex Inc.

TR-98-002

*Recommendation:
Indeterminate tariff
relief
(February 8, 1999)*

The Tribunal recommended to the Minister of Finance that tariff relief on importations of fabric, solely of 2-ply cotton yarns of different colours, having a decitex not exceeding 180 per single yarn, of a weight of 100 g/m² or more but not exceeding 200 g/m², certified by the exporter to have been knit on a Jacquard circular weft-knitting machine and to have been "double mercerized" (i.e. the yarns have been mercerized, knit into a fabric and subjected to a second mercerization process), for use in the manufacture of golf jerseys, be granted for an indeterminate period of time. The Tribunal noted that, based on the information available, there was no domestic production of identical or substitutable fabrics and that, consequently, there should be no economic cost to producers from granting the tariff relief requested. The Tribunal concluded that, considering the benefits to Distex Inc., granting the tariff relief requested would result in net economic benefits to Canada.

TABLE 1

Disposition of Requests for Tariff Relief Between April 1, 1998, and March 31, 1999

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-95-013A (previously TR-95-013)	Doubletex	Fabric	December 21, 1998	Indeterminate tariff relief
TR-96-014	Peerless Clothing Inc.	Fabric	January 28, 1999	Request withdrawn
TR-97-004, TR-97-007, TR-97-008 and TR-97-010	Blue Bird Dress of Toronto Ltd.	Fabric	July 23, 1998	Indeterminate tariff relief
TR-97-005	Phantom Industries Inc.	Yarn	May 8, 1998	Tariff relief not granted
TR-97-006	Peerless Clothing Inc.	Fabric and nonwoven	October 29, 1998	Indeterminate tariff relief
TR-97-011	Australian Outback Collection (Canada) Ltd.	Fabric	October 30, 1998	Indeterminate tariff relief
TR-97-012	Ballin Inc.	Fabric	In progress	
TR-97-013	Blue Bird Dress of Toronto Ltd.	Fabric	April 24, 1998	File closed
TR-97-014	Lenrod Industries Ltd.	Nonwoven	November 10, 1998	Indeterminate tariff relief
TR-97-015, TR-97-016 and TR-97-020	Helly Hansen Canada Limited	Fabric	March 19, 1999	Indeterminate tariff relief
TR-97-017	Helly Hansen Canada Limited	Fabric	December 22, 1998	Request withdrawn
TR-97-018	Helly Hansen Canada Limited	Fabric	December 22, 1998	Request withdrawn
TR-97-019	Helly Hansen Canada Limited	Fabric	December 22, 1998	Request withdrawn
TR-97-021	Wire Rope Industries Limited	Sisal core	January 5, 1999	Tariff relief not granted
TR-98-001	Cambridge Industries	Netting	February 12, 1999	Indeterminate tariff relief
TR-98-002	Distex Inc.	Fabric	February 8, 1999	Indeterminate tariff relief
TR-98-003	Zenobia Collections Inc.	Fabric	December 1, 1998	File closed

Disposition of Requests (cont'd)

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-98-004, TR-98-005 and TR-98-006	Ladcal Investments Ltd., O/A Pintar Manufacturing, Nour Trading House Inc. and T.S. Simms and Company Limited	Fabric	In progress	
TR-98-007	Caulfeild Apparel Group Ltd.	Fabric	March 31, 1999	Indeterminate tariff relief
TR-98-008	Zenobia Collection Inc.	Fabric	Not yet initiated	
TR-98-009	Zenobia Collection Inc.	Fabric	Not yet initiated	
TR-98-010	Zenobia Collection Inc.	Fabric	Not yet initiated	
TR-98-011	Zenobia Collection Inc.	Fabric	Not yet initiated	
TR-98-012	Zenobia Collection Inc.	Fabric	Not yet initiated	
TR-98-013	Zenobia Collection Inc.	Fabric	Not yet initiated	
TR-98-014	Zenobia Collection Inc.	Fabric	Not yet initiated	
TR-98-015	Zenobia Collection Inc.	Fabric	Not yet initiated	
TR-98-016	Peerless Clothing Inc.	Fabric	March 24, 1999	Indeterminate tariff relief
TR-98-017	Jones Apparel Group Canada Inc.	Fabric	In progress	
TR-98-018	Utex Corporation	Fabric	Not yet initiated	
TR-98-019	Tribal Sportswear Inc.	Fabric	Not yet initiated	

TABLE 2

Notices of Expiry of Tariff Relief Recommendations Between April 1, 1998, and March 31, 1999

Expiry No.	Original Request No.	Textile Input	Status/Recommendations
TE-97-002	TR-94-005	100 percent polyester herringbone woven fabric	Review not warranted, no continuation of tariff relief
TE-98-001	TR-95-014	Cut warp pile fabrics	Review initiated (TA-98-003)
TE-98-002	TR-94-002	Certain ring-spun yarns	In progress

TABLE 3**Disposition of Reviews of Tariff Relief Recommendations Between April 1, 1998, and March 31, 1999**

Review No.	Expiry No. (Original Request No.)	Textile Input	Date of Disposition	Status/Recommendations
TA-98-001	TE-97-004 (TR-95-009)	Certain dyed woven fabrics of rayon and polyester	May 14, 1998	Continuation of tariff relief
TA-98-002	TE-97-003 (TR-94-009)	VINEX FR-9B fabric	June 29, 1998	Continuation of tariff relief
TA-98-003	TE-98-001 (TR-95-014)	Woven cut warp pile fabrics	January 13, 1999	Continuation of tariff relief

TABLE 4

Tariff Relief Recommendations in Place

Request No./ Review No.	Requester/Textile Input	Tariff Item(s)/Order in Council	Duration
TR-94-001	Canatex Industries (Division of Richelieu Knitting Inc.)	5402.41.12	Indeterminate tariff relief
TR-94-002 and TR-94-002A	Kute-Knit Mfg. Inc.	5205.14.20 5205.15.20 5205.24.20 5205.26.20 5205.27.20 5205.28.20 5205.35.20 5205.46.20 5205.47.20 5205.48.20 5206.14.10 5206.15.10 5206.24.10 5206.25.10 5509.53.10 P.C. 1996-1089	Three-year tariff relief
TR-94-004	Woods Canada Limited	5208.52.10	Indeterminate tariff relief
TR-94-010	Palliser Furniture Ltd.	5806.20.10	Indeterminate tariff relief
TR-94-012	Peerless Clothing Inc.	5309.29.20	Indeterminate tariff relief
TR-94-013 and TR-94-016	MWG Apparel Corp.	5208.42.20 5208.43.20 5208.49.20 5513.31.10 5513.32.10 5513.33.10	Indeterminate tariff relief
TR-94-017 and TR-94-018	Elite Counter & Supplies	9943.00.00	Indeterminate tariff relief
TR-95-003	Landes Canada Inc.	5603.11.20 5603.12.20 5603.13.20 5603.14.20 5603.91.20 5603.92.20 5603.93.20 5603.94.20	Indeterminate tariff relief
TR-95-004	Lingerie Bright Sleepwear (1991) Inc.	5208.12.20 5208.52.20	Indeterminate tariff relief
TR-95-005	Lingerie Bright Sleepwear (1991) Inc.	5513.11.10 5513.41.10	Indeterminate tariff relief

Recommendations in Place (cont'd)

Request No./ Review No.	Requester/Textile Input	Tariff Item(s)/Order in Council	Duration
TR-95-009	Peerless Clothing Inc.	5408.21.10 5408.21.20 5408.22.21 5408.22.30	Indeterminate tariff relief
TR-95-010 and TR-95-034	Freed & Freed International Ltd. and Fen-nelli Fashions Inc.	5111.19.10 5111.19.20	Indeterminate tariff relief
TR-95-011	Louben Sportswear Inc.	5408.31.10 5408.32.20	Indeterminate tariff relief
TR-95-012	Perfect Dyeing Canada Inc.	5509.32.10	Indeterminate tariff relief
TR-95-013A (previously TR-95-013)	Doubletex	5208.11.30 5208.12.40 5208.13.20 5208.19.30 5208.21.40 5208.22.20 5208.23.10 5208.29.20 5209.11.30 5209.12.20 5209.19.30 5209.21.20 5209.22.10 5209.29.20	Indeterminate tariff relief
TR-95-036	Canadian Mill Supply Co. Ltd.	5208.21.20	Indeterminate tariff relief
TR-95-037	Paris Star Knitting Mills Inc.	5408.24.11 5408.24.91 5408.34.10 5516.14.10 5516.24.10	Indeterminate tariff relief
TR-95-051	Camp Mate Limited	5407.41.10 5407.42.10 5407.42.20 5903.20.22	Indeterminate tariff relief
TR-95-053 and TR-95-059	Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	5802.11.10 5802.19.10 5802.19.20	Indeterminate tariff relief
TR-95-056	Sealy Canada Ltd.	3921.19.10 5407.69.10 5407.73.10 5407.94.10 5516.23.10 5903.90.21 6002.43.20	Indeterminate tariff relief

Recommendations in Place (cont'd)

Request No./ Review No.	Requester/Textile Input	Tariff Item(s)/Order in Council	Duration
TR-95-057 and TR-95-058	Doubletex	5407.51.10 5407.61.92 5407.69.10 5515.11.10 5516.21.10 5516.91.10	Indeterminate tariff relief
TR-95-060	Triple M Fiberglass Mfg. Ltd.	7019.59.10	Indeterminate tariff relief
TR-95-061	Camp Mate Limited	6002.43.30	Indeterminate tariff relief
TR-95-064 and TR-95-065	Lady Americana Sleep Products Inc. and el ran Furniture Ltd.	6002.43.10	Indeterminate tariff relief
TR-96-003	Venture III Industries Inc.	5407.61.92	Indeterminate tariff relief
TR-96-004	Acton International Inc.	5906.99.21	Indeterminate tariff relief
TR-96-006	Alpine Joe Sportswear Ltd.	P.C. 1998-1118	Six-year tariff relief
TR-96-008, TR-96-010 to TR-96-013	Les Collections Shan Inc.	P.C. 1997-1668	Five-year tariff relief
TR-97-001	Jones Apparel Group Canada Inc.	5407.91.10 5407.92.20 5407.93.10 5408.21.30 5408.22.40 5408.23.20 5408.31.30 5408.32.40 5408.33.10	Indeterminate tariff relief
TR-97-002 and TR-97-003	Universal Manufacturing Inc.	5208.43.30 5513.41.20	Indeterminate tariff relief
TR-97-006	Peerless Clothing Inc.	5407.51.30 5903.90.22 5903.90.23 5903.90.24 6002.43.40 6002.43.50	Indeterminate tariff relief
TR-97-004, TR-97-007, TR-97-008 and TR-97-010	Blue Bird Dress of Toronto Ltd.	5407.51.20 5407.52.20 5407.61.94 5407.69.20	Indeterminate tariff relief
TR-97-011	Australian Outback Collection (Canada) Ltd.	5209.31.20 5907.00.16	Indeterminate tariff relief
TR-97-014	Lenrod Industries Ltd.	5603.93.40	Indeterminate tariff relief

Recommendations in Place (cont'd)

Request No./ Review No.	Requester/Textile Input	Tariff Item(s)/Order in Council	Duration
TR-98-001	Cambridge Industries	5608.19.20	Indeterminate tariff relief
TA-98-001	Certain dyed woven fabrics of rayon and polyester	5408.31.20 5408.32.30	Indeterminate tariff relief
TA-98-002	Vinex FR-9B fabric	5512.99.10	Indeterminate tariff relief
TA-98-003	Woven cut warp pile fabrics	5801.35.10	Indeterminate tariff relief

CHAPTER VI

PROCUREMENT REVIEW

Introduction

Suppliers may challenge federal government procurement decisions that they believe have not been made in accordance with the requirements of the following: Chapter Ten of NAFTA, Chapter Five of the AIT or the AGP. The bid challenge portions of these agreements came into force on January 1, 1994, July 1, 1995, and January 1, 1996, respectively.

Any potential suppliers who believe that they may have been unfairly treated during the solicitation or evaluation of bids, or in the awarding of contracts on a designated procurement, may lodge a formal complaint with the Tribunal. A potential supplier with an objection is encouraged to resolve the issue first with the government institution responsible for the procurement. When this process is not successful or a supplier wants to deal directly with the Tribunal, the complainant may ask the Tribunal to consider the case by filing a complaint within the prescribed time limit.

When the Tribunal receives a complaint, it reviews the submission against the criteria for filing. If there are deficiencies, the complainant is given an opportunity to correct these within a specified time limit. If the Tribunal decides to conduct an inquiry, the government institution and all other interested parties are sent a formal notification of the complaint. An official notice of the complaint is also published in *Government Business Opportunities* and the *Canada Gazette*. If the contract in question has not been awarded, the Tribunal may order the government institution to postpone awarding any contract pending the disposition of the complaint by the Tribunal, unless the government institution certifies that the procurement is urgent or that the delay would be against the public interest.

After receipt of its copy of the complaint, the government institution responsible for the procurement files a Government Institution Report (GIR) responding to the allegations. The complainant is then sent a copy of the GIR and has seven days to submit comments. These are forwarded to the government institution and any interveners.

A staff investigation, which can include interviewing individuals and examining files and documents, may be conducted and result in the production of

a Staff Investigation Report. This report is circulated to the parties for their comments. Once this phase of the inquiry is completed, the Tribunal reviews the information collected and decides whether a hearing should be held.

The Tribunal then makes a determination, which may consist of recommendations to the government institution (such as re-tendering, re-evaluating or providing compensation) and the award of reasonable costs to a prevailing complainant for filing and proceeding with the bid challenge and/or costs for preparing the bid. The government institution, as well as all other parties and interested persons, is notified of the Tribunal's decision. Recommendations made by the Tribunal in its determination are to be implemented to the greatest extent possible.

Summary of Procurement Review Activities

	1997-98	1998-99
CASES RESOLVED BY OR BETWEEN PARTIES		
Resolved Between Parties	1	-
Withdrawn	9	6
Abandoned While Filing	<u>2</u>	<u>4</u>
Subtotal	12	10
INQUIRIES NOT INITIATED OR CONTINUED ON PROCEDURAL GROUNDS		
Lack of Jurisdiction	8	6
Late Filing	4	7
No Valid Basis	<u>12</u>	<u>4</u>
Subtotal	24	17
CASES DETERMINED ON MERIT		
Complaint not Valid	9	14
Complaint Valid	<u>7</u>	<u>10</u>
Subtotal	16	24*
IN PROGRESS	<u>11</u>	<u>15</u>
TOTAL	63	66

* The Tribunal actually issued 21 written determinations which related to 24 procurement complaints.

Summary of Selected Determinations

During fiscal year 1998-99, the Tribunal issued 21 written determinations of its findings and recommendations which related to 24 procurement complaints. In 9 of the 21 written determinations, the complaints were determined to be valid or valid in part. In these cases, various remedies were granted in the form of cost awards or recommendations. Twelve other cases were in progress at year end, and two cases were being filed. Table 1 at the end of this chapter summarizes these activities, as well as those cases resolved by or between parties.

Of the cases heard by the Tribunal in carrying out its procurement review functions, certain decisions stand out from among the others because of the legal significance of the cases. A brief résumé of a representative sample of such cases follows. These summaries have been prepared for general information purposes only and have no legal status.

Frontec Corporation

PR-97-035

*Determination:
Complaint dismissed/
Complaint not valid
(May 6, 1998)*

The Tribunal made a determination with respect to a complaint filed by Frontec Corporation (Frontec) concerning a solicitation of the Department of Public Works and Government Services (the Department). The solicitation was for operation and maintenance services for the 5-Wing Goose Bay military airfield, Newfoundland, for the Department of National Defence.

Frontec alleged that, contrary to the provisions of the AIT, its proposal was unfairly and improperly excluded from the subject solicitation because of an unfair, improper or inconsistent evaluation by the Department.

Having examined the evidence and arguments presented by the parties and considered the subject matter of the complaint, the Tribunal determined that the complaint was not valid.

Lotus Development Canada Limited, Novell Canada, Ltd. and Netscape Communications Canada Inc.

*PR-98-005, PR-98-006
and PR-98-009*

*Determination:
Complaints dismissed/
Lack of jurisdiction
(August 14, 1998)*

The Tribunal made a determination with respect to complaints filed by Lotus Development Canada Limited, Novell Canada, Ltd. and Netscape Communications Canada Inc. (the complainants) concerning a solicitation of the Department of Public Works and Government Services (the Department) for the procurement of a Microsoft NT server, a BackOffice server and BackOffice client access licences for the Department of Foreign Affairs and International Trade. The Department proceeded on a limited tender basis due to the urgency of the requirement and for national security reasons.

The complainants alleged that the procurement process was flawed because more than one supplier was capable of supplying the requirement.

After careful consideration of the applicable legislation, the requirements of NAFTA, the AGP and the AIT and the positions of the parties, the Tribunal

	<p>determined that it did not have jurisdiction to continue its inquiries into these complaints, and the complaints were dismissed.</p>
<p><i>Jastram Technologies Inc.</i></p> <p><i>PR-98-008</i></p> <p><i>Determination: Inquiry not initiated/ Late filing (June 17, 1998)</i></p>	<p>The Tribunal made a decision with respect to a complaint filed by Jastram Technologies Inc. (Jastram) concerning a solicitation of the Department of Public Works and Government Services (the Department) for specialized batteries, on behalf of the Department of National Defence.</p> <p>Jastram alleged that the Department failed to clearly identify how equivalency would be determined.</p> <p>Having examined the evidence contained in the complaint, the Tribunal decided not to initiate an inquiry into this complaint because it was not filed within the time limits for filing a complaint set out in section 6 of the <i>Canadian International Trade Tribunal Procurement Inquiry Regulations</i>. Jastram has appealed this decision to the Federal Court of Canada.</p>
<p><i>Corel Corporation</i></p> <p><i>PR-98-012 and PR-98-014</i></p> <p><i>Determination: Complaints valid (October 26, 1998)</i></p>	<p>The Tribunal made a determination with respect to two complaints filed by Corel Corporation (Corel) concerning a solicitation of the Department of Public Works and Government Services (the Department). The solicitation was for an enterprise licence for an office automation suite for Revenue Canada.</p> <p>Corel alleged that the Department created an evaluation framework for the Request for Proposal that was biased in favour of the incumbent, Microsoft Corporation.</p> <p>Having examined the evidence and arguments presented by the parties and considered the subject matter of the complaint, the Tribunal determined that the procurement was not conducted according to NAFTA, the AGP and the AIT and that, therefore, the complaints were valid.</p> <p>The Tribunal recommended, as a remedy, that the Department issue a new solicitation for the procurement or, in the alternative, that the Department develop jointly with Corel a proposal for compensation.</p> <p>The Department has appealed the Tribunal's determination to the Federal Court of Canada.</p>
<p>Judicial Reviews of Procurement Decisions</p>	<p>The Federal Court of Canada dismissed applications by both the Attorney General of Canada (on behalf of Defence Construction Canada) and I.C.S. International Code Fire Services Inc. to review a decision by the Tribunal in File No. PR-97-008, <i>Symtron Systems Inc.</i></p>

On September 28, 1998, the Federal Court of Canada made a decision (Court File No. T—944—98) relating to a Tribunal case (File No. PR-97-034, *Wang Canada Limited*) in which the Department of Public Works and Government Services decided not to implement the Tribunal's recommendation to award the contract at issue to Wang Canada Limited. The Federal Court of Canada quashed the decision not to implement and ordered the Department to follow the Tribunal's recommendation.

Table 2 lists the procurement decisions that were appealed to or decided by the Federal Court of Canada during fiscal year 1998-99.

TABLE 1**Disposition of Procurement Complaints Between April 1, 1998, and March 31, 1999**

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-97-033	IBM Canada Ltd.	December 11, 1997	Decision issued April 24, 1998 Complaint valid
PR-97-035	Frontec Corporation	December 22, 1997	Decision issued May 6, 1998 Complaint not valid
PR-97-036	Novus Incorporated	December 29, 1997	Complaint withdrawn
PR-97-037	Tactical Technologies Inc.	December 31, 1997	Decision issued April 30, 1998 Complaint valid in part
PR-97-040	Société de coopération pour le développement international	January 22, 1998	Decision issued April 9, 1998 Complaint not valid
PR-97-041	Mirtech International Security Inc.	January 28, 1998	Decision issued May 15, 1998 Complaint not valid
PR-97-045	Folite Industries	February 6, 1998	Decision issued May 8, 1998 Complaint not valid
PR-97-047	Valcom Ltd.	February 12, 1998	Order issued April 21, 1998 Complaint dismissed/Late filing
PR-97-051	Safety Projects International Inc.	March 12, 1998	Decision issued June 18, 1998 Complaint not valid
PR-97-052	PeopleSoft Canada Company Limited	March 16, 1998	Complaint withdrawn
PR-97-054	Bell Canada	March 27, 1998	Decision issued July 13, 1998 Complaint valid
PR-98-001	SHL Systemhouse	April 29, 1998	Complaint withdrawn
PR-98-002	Installation Globale Normand Morin & Fils Inc.	May 1, 1998	Decision issued August 21, 1998 Complaint valid
PR-98-003	Premium DataScan Services, Inc.	May 8, 1998	Decision issued August 12, 1998 Complaint not valid
PR-98-004	Rogers Enterprises Ltd.	May 11, 1998	Not accepted for inquiry/No reasonable indication of a breach
PR-98-005, PR-98-006 and PR-98-009	Lotus Development Canada Limited, Novell Canada, Ltd. and Netscape Communications Canada Inc.	May 25 and 26 and June 1, 1998	Decision issued August 14, 1998 Complaints dismissed
PR-98-007	Safety Projects International Inc.	May 26, 1998	Decision issued August 24, 1998 Complaint not valid
PR-98-008	Jastram Technologies Inc.	June 1, 1998	Not accepted for inquiry/Late filing
PR-98-010	M.E.C. Systems Inc.	June 4, 1998	Not accepted for inquiry/Late filing
PR-98-011	Evans	June 5, 1998	Abandoned while filing

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-98-012 and PR-98-014	Corel Corporation	June 12 and July 14, 1998	Decision issued October 26, 1998 Complaints valid
PR-98-013	E.W. Consulting Services Corp.	July 9, 1998	Not accepted for inquiry/Not a designated entity
PR-98-015	3M Canada Company	July 21, 1998	Not accepted for inquiry/Not a potential supplier
PR-98-016	Teknion Furniture System	July 29, 1998	Complaint withdrawn
PR-98-017	3M Canada Company	August 7, 1998	Not accepted for inquiry/Not a designated contract
PR-98-018	Ferriby Marine	August 26, 1998	Not accepted for inquiry/Late filing
PR-98-019	Amdahl	August 28, 1998	Complaint withdrawn
PR-98-020	Giga-Tron Associates Ltd.	August 28, 1998	Not accepted for inquiry/Late filing
PR-98-021	Transpolar Technology Corporation	September 10, 1998	Not accepted for inquiry/Not a designated contract
PR-98-022	SHL Systemhouse	September 17, 1998	Not accepted for inquiry/No denial of relief
PR-98-023	Marcomm Fibre Optics Inc.	September 24, 1998	Decision issued December 7, 1998 Complaint not valid
PR-98-024	Atlantic Safety Centre	September 25, 1998	Abandoned while filing
PR-98-025	M.D. Heat Techs Inc.	September 28, 1998	Decision issued December 3, 1998 Complaint not valid
PR-98-026	Krista Dunlop & Associates	October 9, 1998	Not accepted for inquiry/Late filing
PR-98-027	Service Star Building Cleaning Inc.	October 23, 1998	Decision issued January 22, 1999 Complaint valid
PR-98-028	Spacesaver Corporation	October 27, 1998	Decision issued January 11, 1999 Complaint valid
PR-98-029	Doran Canadian Expo Consortium	November 2, 1998	Decision issued February 12, 1999 Complaint not valid
PR-98-030	Valcom Ltd.	November 6, 1998	Not accepted for inquiry/No reasonable indication of a breach
PR-98-031	Service Star Building Cleaning Inc.	November 17, 1998	Decision issued February 12, 1999 Complaint not valid
PR-98-032	Polaris Inflatable Boats Canada Inc.	November 19, 1998	Decision issued March 8, 1999 Complaint valid
PR-98-033	Polaris Inflatable Boats Canada Inc.	November 19, 1998	Decision issued March 8, 1999 Complaint valid
PR-98-034	Keystone Supplies Company	December 1, 1998	Accepted for inquiry

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-98-035	Keystone Supplies Company	December 1, 1998	Accepted for inquiry
PR-98-036	Colebrand Limited	December 7, 1998	Not accepted for inquiry/Not a designated contract
PR-98-037	ITS Electronics	January 4, 1999	Accepted for inquiry
PR-98-038	MIL Systems	January 5, 1999	Accepted for inquiry
PR-98-039	Wescam Inc.	January 19, 1999	Accepted for inquiry
PR-98-040	Cougar Aviation Limited	January 22, 1999	Accepted for inquiry
PR-98-041	Energy and Environmental Analysis, Inc.	January 28, 1999	Complaint withdrawn
PR-98-042	Discover Training Inc.	February 1, 1999	Accepted for inquiry
PR-98-043	NFC Canada Limited	February 2, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-98-044	Ultimatrol Technologies Inc.	February 2, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-98-045	Ruiter Construction Ltd.	February 5, 1999	Accepted for inquiry
PR-98-046	Deloitte & Touche Consulting Group	February 8, 1999	Accepted for inquiry
PR-98-047	Novell Canada, Ltd.	February 11, 1999	Accepted for inquiry
PR-98-048	Service Star Building Cleaning Inc.	February 16, 1999	Abandoned while filing
PR-98-049	Malatest & Associates Ltd.	February 25, 1999	Abandoned while filing
PR-98-050	Douglas Barlett Associates Inc.	March 1, 1999	Accepted for inquiry
PR-98-051	National Airmotive Corporation	March 10, 1999	Accepted for inquiry
PR-98-052	Marathon Management Company	March 11, 1999	Accepted for inquiry
PR-98-053	KPMG Consulting Services	March 17, 1999	Not accepted for inquiry/Late filing
PR-98-054	Mediascan	March 22, 1999	Being filed
PR-98-055	Mxl Technologies Ltd.	March 31, 1999	Being filed

TABLE 2**Cases Before the Federal Court of Canada Between April 1, 1998, and March 31, 1999**

File No.	Complainant	Appellant	File No./ Status
PR-97-008	Symtron Systems Inc.	I.C.S. International Code Fire Services Inc.	A—700—97 Application dismissed
PR-97-008	Symtron Systems Inc.	Attorney General of Canada	A—687—97 Application dismissed
PR-98-008	Jastram Technologies Inc.	Jastram Technologies Inc.	A—406—98
PR-98-012 and PR-98-014	Corel Corporation	Attorney General of Canada	A—696—98
PR-98-043	NFC Canada Limited	NFC Canada Limited	T—515—99

CHAPTER VII

FINDING THE RIGHT PROCEDURAL BALANCE IN SIMA INQUIRIES

Introduction

The Tribunal is a quasi-judicial body which has rules and procedures similar to those of a court of law, but they are not quite as strict or formal. It is constituted in this way as a court of easy access, in part, so that large and small companies alike may readily and effectively avail themselves of the rights that they have under SIMA to take and respond to trade action involving dumped and subsidized imports.

Indeed, the size and complexity of cases which come before the Tribunal vary widely. There are cases brought by large, well-known Canadian firms, involving hundreds of millions of dollars in international trade, and cases brought by small, privately held firms, involving no more than a few hundred thousand dollars in trade. The former cases typically involve numerous parties, with each represented by legal teams from some of the largest firms in the country. The smaller cases typically involve few parties, not all of which may be represented by counsel.

Clearly, the Tribunal's stakeholders have widely different levels of understanding of the complexities of trade law and widely different levels of financial resources to apply to the exercise of their legal rights. The challenge for the Tribunal, from a procedural standpoint, is to put in place a process that responds fairly, efficiently and effectively to the different needs and circumstances of all of its stakeholders.

This procedural challenge requires the Tribunal to strike a balance between often conflicting pressures. For example, while the Tribunal may strive to streamline its procedures, to keep them simple and understandable and to keep costs down, the requirements of fairness and natural justice impose certain minimum requirements that some stakeholders may perceive as legalistic, complex and costly. Moreover, while the Tribunal strives to conduct an open and transparent process, it must at the same time ensure that there is no public disclosure of any party's confidential information which could cause that party commercial harm.

Achieving a proper balance of these opposing procedural demands requires constant vigilance and monitoring by the Tribunal. In this context, over the past

several years, the Tribunal has used a variety of consultative processes to obtain the views of its stakeholders on its existing procedures and proposed changes to those procedures. These include holding bi-annual meetings between the trade bar and the Tribunal; conducting surveys of stakeholders to obtain their views and opinions on procedural matters; and organizing workshops for stakeholders on specific procedural issues.

Following feedback from its stakeholders, the Tribunal has made several adjustments to its inquiry procedures over the past few years. Generally speaking, the thrust of these changes was to improve the quality and flow of information that is collected and exchanged by the Tribunal and the parties in the period leading up to the hearings in inquiries and reviews. The following section will describe the initiatives which the Tribunal has undertaken, the specific changes which have been made and the reasons for those changes.

The Tribunal was established in 1989, as part of a reorganization of Canada's trade institutions. Specifically, the Tribunal replaced and took over the responsibilities of the Canadian Import Tribunal, the Tariff Board and the Textile and Clothing Board. The Tribunal's creation also coincided with the implementation of the *Canada-United States Free Trade Agreement* (the FTA) along with its unique and novel approach to trade dispute resolution - the binational panel appeal process. Under the binational panel appeal process, Tribunal decisions in SIMA cases, which were reviewable by the Federal Court of Canada, could alternatively be appealed, by Canadian or US companies, to a binational panel of trade specialists. The binational panel mechanism was, of course, subsequently brought forward into NAFTA when the FTA was expanded to include Mexico.

The new binational panel appeal process took little time to make its presence felt, as counsel were eager to test it out as an alternative appeal route. By the early 1990s, binational panels had rendered several major decisions on appeals of Tribunal anti-dumping and countervailing decisions. It was apparent from these early decisions that the binational panel appeal process had placed Canadian anti-dumping/countervailing inquiries under a heightened degree of scrutiny and oversight. At about the same time, the Tribunal's inquiries were becoming more litigious, as parties, through their counsel, sought to assert their claims and rights more aggressively than in the past. This increased litigation may have been prompted, at least to some extent, by the evolution of charter cases and other developments in Canadian administrative law.

All of these developments contributed to altering the Tribunal's operational environment in a way that tended to foster an increase in the length and

complexity of Tribunal hearings, a growth in the information burden on parties and a corresponding expansion in the size and complexity of the Tribunal's inquiry record. In turn, these changes were accompanied by increasing costs for all participants. By 1994, the Tribunal recognized that the increasing costs and complexity of its inquiries, if not stemmed or reversed, could undermine the kind of accessibility that the Canadian anti-dumping/countervailing regime was intended to provide. While the concern over costs and complexity applied to all stakeholders, smaller companies with limited resources seemed especially vulnerable. Accordingly, in the fall of 1994, the Tribunal established an internal committee to conduct a full review of Tribunal procedures in SIMA inquiries and reviews with a view to proposing ways and means of making the process less costly and more efficient, without compromising the principles of fairness and transparency.

Over the next two years, the Tribunal prepared a number of discussion papers on proposed changes which were circulated to and discussed with stakeholders. In the fall of 1996, the Tribunal implemented a number of significant changes, ranging from those relating to scheduling and time management to those which addressed the way in which information is collected, exchanged and recorded in the Tribunal's inquiries and reviews.

In terms of scheduling and time management, the Tribunal decided that the key dates for the filing and distribution of information would be advanced so that parties would have more time to review material in advance of the hearing. New procedures were also announced for more strictly enforcing filing deadlines for questionnaires and submissions. The Tribunal also decided that hearing schedules should be subject to shorter and stricter time limits. Beyond these scheduling and time management issues, there were other substantive changes relating to information collection and distribution, and protection of confidential information which are elaborated below.

Information Issues

Questionnaires

A first important change dealt with expanding the investigative activities of the Tribunal. More specifically, it was decided that the Tribunal would formally seek the input of parties in the design of the various manufacturer, importer, exporter and purchaser questionnaires which it used to gather key statistical and other information in SIMA inquiries and reviews. Although the Tribunal had sometimes, on an *ad hoc* basis, sought the views of parties in the past, the consultations which took place were generally limited to a specified narrow range of questionnaire issues.

In formalizing and broadening the consultation process, the objective was to enable the Tribunal to customize its questionnaires to the particular issues and

information requirements of each case, having regard to the capabilities of the parties to provide the necessary information, in a timely manner, without undue burden. Consultations would also tend to reduce the likelihood of collecting redundant and unnecessary information. Moreover, it was felt that, in many instances where parties required information that would assist in the Tribunal's inquiry or review, it would be more effective and efficient and, hence, less costly for the overall process if the Tribunal assumed responsibility, through its questionnaires, for gathering the information.

Requests for
Information

A second significant change involved establishing a process for the orderly exchange of requests for information (RFIs) between parties prior to a hearing. Under the previous procedures, parties had usually sought additional information from each other in the period leading up to the hearing, but there were no set time frames or rules for these exchanges. As a consequence, there tended to be a continual, but unscheduled, flow of requests for information between parties throughout the inquiry. Furthermore, the problems which inevitably arose in connection with these exchanges had to be adjudicated by the Tribunal on an *ad hoc* basis. These exchanges and the related problems often spilled into hearings, disrupting and prolonging them.

Under the proposed RFI procedures, specific time frames for the process were established, providing for the process to be completed well before the hearing. Specific rules were also created to govern the exchanges, including the manner and time frames within which the Tribunal would dispose of parties' objections to RFIs. The proposals thus incorporated the RFI process into the Tribunal's formal inquiry schedule in a way which, it was hoped, would improve the information base for the inquiry and, at the same, encourage shorter, more focused and less costly hearings.

Fine Tuning

The above procedures were implemented by the Tribunal with the understanding that their effectiveness would be subject to ongoing monitoring and further consultation with stakeholders. After the new procedures were applied in the first few cases, it became apparent that there were certain problems which needed to be addressed. In particular, the Tribunal noted that the new RFI procedure had resulted almost immediately in a substantial increase in the scope and volume of information requests. Responding to these requests represented a substantial additional burden on parties. Moreover, while some of the information generated through the RFI process was useful, a significant proportion was of marginal or no relevance, in the Tribunal's estimation.

Following discussions with stakeholders, the Tribunal concluded that the RFI process, as originally conceived, was too open ended and unsupervised in terms

of the scope and nature of the information that parties could request from each other. Accordingly, the Tribunal decided to control excessive requests by requiring parties to submit their questions first to the Tribunal for its consideration, together with an explanation as to why the question was relevant. Only those questions whose relevance the Tribunal accepted would be forwarded to parties for response, subject to any objections that parties might have, according to a specified objection procedure. In the cases heard subsequent to these amendments, the RFI process seems to have worked well in generating useful information without undue costs and burden on the parties, both in the Tribunal's estimation and that of stakeholders that have provided feedback to the Tribunal.

Confidentiality Issues

As often happens, changes in one area may have unintended or unanticipated effects in other areas. For example, while the RFI process enhanced the information base for inquiries, it also raised concerns about the confidentiality of some of the information provided. This was particularly true with respect to documents such as future-oriented company business plans and forecasts. These documents contained strategic information that parties felt could be extremely damaging to their commercial interests if they were disclosed to their competitors.

As a result of these and other related confidentiality concerns, the Tribunal re-examined its confidentiality procedures, over the past year, in consultation with its stakeholders. This re-examination will culminate with the issuing of a guideline and practice notice, in 1999, on the designation and use of confidential information in Tribunal proceedings. Currently, this guideline is under discussion with stakeholders.

This guideline reaffirms the Tribunal's commitment to conducting transparent inquiries with as much information as possible on the public record. At the same time, it reiterates the importance which the Tribunal has always accorded to the protection of commercially sensitive information and summarizes the measures which are already in place to safeguard the legitimate confidentiality concerns of its stakeholders. However, the Tribunal recognizes that there is a need to adjust the existing balance between the opposing requirements of transparency and confidentiality. To this end, the draft guideline contains a number of initiatives.

Filing of Partial Documents

A Tribunal questionnaire or an RFI may sometimes ask parties to produce voluminous documents, including highly sensitive business plans and forecasts. In consultations with stakeholders, concerns were expressed not only over the risks of disclosure of commercially sensitive information but also over the costs and burdens of having to produce entire sets of documents, whether confidential or not, when only a small number of pages may be relevant or necessary in a particular case.

Accordingly, to address the issues of risk, burden and costs, the draft guideline announces a procedure whereby counsel who is being asked to provide information on a client's behalf could request that counsel seeking the information view the material before filing, at an agreed upon location, to determine which, if any, of it is needed. The procedure envisages that parties will, at least initially, attempt to work out an agreement amongst themselves on the viewing and filing of documents. However, where such agreement is not possible, the Tribunal, at a party's request, will decide whether and how a viewing should take place before any documents are filed.

Restricted Access to
Experts

To further safeguard confidential documents, the draft guideline also reiterates that, in certain circumstances, the Tribunal will agree to restrict access to the confidential file by certain persons, such as independent economic and financial experts. Without such restrictions, such persons, when retained by counsel to assist in case preparations, would be granted access to the full confidential file where they had given the required declarations and undertakings not to disclose confidential information. Where such restrictions were granted, the Tribunal would limit experts' access to the confidential record only to that portion which is necessary for them to provide their advice and analysis.

Designation of
Confidential
Information

At the same time as announcing these new confidentiality safeguards, the draft guideline also contains a draft practice notice which conveys the Tribunal's concerns about an increase in the amount of information being designated as confidential in some of its inquiries. This has affected the Tribunal's ability to put information on the public record and conduct hearings open to the public. It also undermines the Tribunal's ability to issue reasons for decision which publicly disclose all relevant information relied upon by it when coming to its decisions.

Accordingly, the draft practice notice reminds parties of their obligation to provide non-confidential summaries of information that they wish to designate as confidential. It also notes the Tribunal's authority to disregard such information where parties are unable, if challenged, to show that the confidentiality designation is justified. To assist persons and counsel in deciding what information can be designated confidential, the notice goes on to provide a non-exhaustive list of the type of information that has typically been considered to be public.

Selective Disclosure of
Account-Specific Injury
Allegations

The draft practice notice also addresses the issue of account-specific injury allegations which frequently contain sensitive information. While recognizing the confidential nature of these allegations, the Tribunal indicates that the requirements of fairness and natural justice oblige a certain minimum amount of

information to be disclosed to the person against whom the allegation is made, in order for that person to respond effectively. This information includes the name of the account or customer, the product in issue, the date of the event and the source of the product. The notice advises parties that failure to make such disclosure could result in the Tribunal not taking the injury allegation into account or giving less weight to the allegation.

Conclusion

Over the past few years, the Tribunal has made numerous adjustments to its SIMA inquiry and review procedures in close consultation with stakeholders. The changes made reflect the Tribunal's commitment to facilitating access to the system for all stakeholders by reducing costs, burden and complexity without compromising fairness. As well, they embody the Tribunal's determination to ensure confidence and security in the system through effective protection of confidential information, while still maintaining the highest possible degree of openness and transparency in its inquiries and reviews.

The next two years also promise to be a period of transition, as the SIMA legislative changes outlined in Chapter II are implemented. In addition to the amendments made to the Tribunal's Rules of Procedure, this will require further amendments to existing procedures. The Tribunal will apply the changes in the same spirit of cooperation with stakeholders that has characterized past changes. Some of the changes arising from the legislative amendments will allow the Tribunal to be more efficient in its operations. Others will pose a challenge to ensure that they do not increase the cost of proceedings. The Tribunal is confident that the procedural framework that it now has in place will enable it to meet this challenge effectively and maintain a cost-effective access to SIMA proceedings. Moreover, the Tribunal will carry forward the same degree of commitment and determination to the principles of access, fairness, security and transparency that have been, and will remain, the hallmarks of its procedures.

PUBLICATIONS

October 1996

Textile Reference Guide

June 1998

An Inquiry in the Importation of Dairy Product Blends Outside the Coverage of Canada's Tariff-rate Quotas

July 1998

Annual Report for the Fiscal Year Ending March 31, 1998

July 1998

Procurement Review Process: A Descriptive Guide

March 1999

Textile Reference: Annual Status Report

Bulletin

Vol. 10, Nos. 1 - 4

**Brochure and
Information
Documents**

A brochure and a series of documents designed to inform the public of the work of the Tribunal are available. They include:

- *Introductory Guide on the Canadian International Trade Tribunal*
- *Information on Appeals from Customs, Excise and SIMA Decisions*
- *Information on Dumping and Subsidizing Inquiries and Reviews*
- *Information on Textile Tariff Investigations*
- *Information on Procurement Review*
- *Information on Import Safeguard Inquiries and Measures*
- *Information on Economic, Trade and Tariff Inquiries*

Publications can be obtained by contacting the Secretary, Canadian International Trade Tribunal, Standard Life Centre, 333 Laurier Avenue West, Ottawa, Ontario K1A 0G7 (613) 993-3595 or they can be accessed on the Tribunal's Web site.

CA1
FN100
- A56

Government
Publications

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL



ANNUAL REPORT

1999-2000

May 2000

FOR THE FISCAL YEAR ENDING
MARCH 31, 2000

ANNUAL REPORT

**FOR THE FISCAL YEAR ENDING
MARCH 31, 2000**



**Canadian
International
Trade Tribunal**

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sur le site Web du Tribunal

au www.tc.gc.ca

CHAIRMAN

PRÉSIDENT

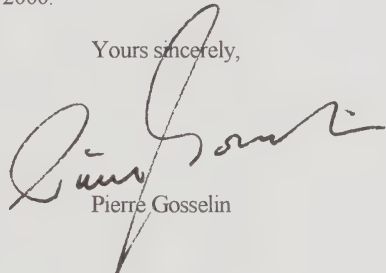
May 31, 2000

The Honourable Paul M. Martin, P.C., M.P.
Minister of Finance
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

I have the honour of transmitting to you, for tabling in the House of Commons, pursuant to section 41 of the *Canadian International Trade Tribunal Act*, the Annual Report of the Canadian International Trade Tribunal for the fiscal year ending March 31, 2000.

Yours sincerely,



Pierre Gosselin

TABLE OF CONTENTS

Chapter I	Tribunal Highlights in Fiscal Year	1
Chapter II	Mandate, Organization and Activities of the Tribunal	5
Chapter III	Dumping and Subsidizing Injury Inquiries and Reviews	11
Chapter IV	Appeals	27
Chapter V	Economic, Trade, Tariff and Safeguard Inquiries	39
Chapter VI	Procurement Review	51
Chapter VII	SIMA Amendments: Inquiries and Reviews	61
	Tribunal Publications	67

LIST OF TABLES

Chapter I	Tribunal's Caseload in Fiscal Year	4
Chapter II	Organization	8
	Legislative Mandate of the Tribunal	9
Chapter III	Findings Issued Under Section 43 of SIMA and Inquiries Under Section 42 of SIMA in Progress at Year End	22
	Orders Issued Under Section 76 of SIMA and Reviews in Progress at Year End	23
	SIMA Findings and Orders in Force as of March 31, 2000	24
	SIMA Cases Before the Federal Court of Canada or a Binational Panel	26
Chapter IV	Decisions on Appeals	29
	Appeal Decisions	35
	Tribunal Decisions Appealed to the Federal Court of Canada	37
	Appeal Decisions of the Federal Court of Canada	38
Chapter V	Disposition of Requests for Tariff Relief	45
	Disposition of Reviews of Tariff Relief Recommendations	46
	Tariff Relief Recommendations in Place	47
Chapter VI	Summary of Procurement Review Activities	52
	Disposition of Procurement Complaints	56
	Procurement Cases Before the Federal Court of Canada	59

CHAPTER I

TRIBUNAL HIGHLIGHTS IN FISCAL YEAR

Members

On July 5, 1999, Mr. Zdenek Kvarda began his term as Member of the Canadian International Trade Tribunal (the Tribunal). From 1986 to 1998, Mr. Kvarda was President and Chief Executive Officer of Aluminum Star Products Limited, one of Canada's finest manufacturers of architectural signage products. In 1991, he was presented with the Award of Merit for Outstanding Business Achievement by the Ontario Chamber of Commerce. Mr. Kvarda occupied various positions with the Eastern Ontario Development Corporation, including the position of Chair. As well as serving as Director of the Ontario Development Corporation, Mr. Kvarda was the founding President of the Belleville Junior Chamber of Commerce, the President and District President of the Ontario Junior Chamber of Commerce and Director of the Canadian Junior Chamber of Commerce.

On November 15, 1999, Mr. James Angus Ogilvy began his term as Member of the Tribunal. Prior to his appointment, Mr. Ogilvy was the Director, Internal Trade, with Alberta Intergovernmental and Aboriginal Affairs and also served as Alberta's Internal Trade Representative. Previously, he was the Director, Planning and Policy Development for the Alberta Liquor Control Board. Mr. Ogilvy was the Senior Editor, Humanities, of the *Canadian Encyclopedia*, as well as the Manuscript Editor of the *Dictionary of Canadian Biography*. He was also a lecturer at Bishop's University and Victoria College, University of Toronto.

On June 1, 1999, Mr. Arthur B. Trudeau began his term as temporary Member of the Tribunal. Until March 31, 1998, Mr. Trudeau was a Vice-Chair of the Tribunal. Prior to joining the federal government in 1971, he held managerial positions in accounting and finance with DuPont of Canada Ltd. He has held positions with the Department of Regional Economic Expansion and was the Secretary of the Anti-dumping Tribunal and of its successor, the Canadian Import Tribunal. In 1988, Mr. Trudeau was appointed to the position of Member of the Canadian Import Tribunal. He was a Member of the Tribunal starting in December 1988 and was appointed to the position of Vice-Chair on January 1, 1992.

During the fiscal year, the term of Ms. Anita Szlazak as Member of the Tribunal expired. The Tribunal would like to take this opportunity to recognize Ms. Szlazak's valuable contribution to the Tribunal's work.

Dumping and Subsidizing Inquiries and Reviews

In the fiscal year, the Tribunal issued four findings following injury inquiries under section 42 of the *Special Import Measures Act* (SIMA) and seven orders following reviews under section 76. At the end of the year, there were two inquiries and five reviews in progress.

Legislative Amendments to SIMA and the Canadian International Trade Tribunal Act

Legislative amendments to SIMA and the *Canadian International Trade Tribunal Act* (CITT Act) will come into force on April 15, 2000. These amendments will bring changes to the jurisdiction, procedures and processes of the Tribunal.

In order to familiarize stakeholders with those changes, the Tribunal will issue a series of interim guidelines dealing with preliminary injury inquiries, public interest inquiries, interim reviews and expiry reviews. These documents will be available on the Tribunal's Web site (www.citt.gc.ca). Chapter VII of this report describes how the Tribunal will conduct each of those proceedings under the new regime.

Trade and Tariff Reference

Textiles

During the fiscal year, the Tribunal issued six reports to the Minister of Finance concerning requests for tariff relief. In addition, the Tribunal's fifth annual status report on the investigation process was submitted to the Minister of Finance on January 27, 2000.

Appeals

The Tribunal issued decisions on 64 appeals from decisions of the Department of National Revenue (Revenue Canada) (now the Canada Customs and Revenue Agency [CCRA]) made under the *Customs Act* and the *Excise Tax Act*. On November 1, 1999, the CCRA was established to carry out the mandate of Revenue Canada.

Procurement Review

The Tribunal received 53 complaints during the fiscal year. The Tribunal issued 26 written determinations of its findings and recommendations. Eleven of these determinations related to cases that were in progress at the end of fiscal year 1998-99. In 14 of the 26 written determinations, the complaints were determined to be valid or valid in part.

**Access to
Tribunal Notices,
Decisions and
Publications**

Tribunal notices and decisions are published in the *Canada Gazette*. Those relating to procurement complaints are also published in *Government Business Opportunities*.

The Tribunal's Web site provides an exhaustive repository of all Tribunal notices, decisions and publications, as well as other information relating to the Tribunal's current activities. The Tribunal alerts subscribers of each new posting on its Web site. This service is available on request free of charge.

**Rules of
Procedure**

The Tribunal has completed its review of the *Canadian International Trade Tribunal Rules* (Rules of Procedure). The purpose of the review was to eliminate unnecessary rules, to increase efficiency and transparency and to preserve fairness. Procedures have been modified to reflect technological changes. The review also allowed the Tribunal to incorporate new rules to accommodate legislative amendments to SIMA and the CITT Act that will come into effect on April 15, 2000. The revised Rules of Procedure will be published in the April 26, 2000, edition of the *Canada Gazette*, Part II, and will come into effect on April 15, 2000.

**Meeting Statutory
Deadlines
(Timeliness)**

All the Tribunal inquiries were completed on time, and decisions were issued within the statutory deadlines. For appeals of CCRA decisions that are not subject to statutory deadlines, the Tribunal usually issues, within 120 days of the hearing, a decision on the matter in dispute, including the reasons for its decision.

Tribunal's Caseload in Fiscal Year

	Cases Brought Forward from Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions/ Reports Issued	Cases Withdrawn/ Not Initiated	Cases Outstanding (March 31, 2000)
SIMA ACTIVITIES						
References (Advice)	-	3	3	3	-	-
Inquiries	3	4	7	4	1	2
Public Interest Requests	-	1	1	1	-	-
Requests for Review	-	-	-	-	-	-
Expiries ¹	-	9	9	6	3	-
Reviews	5	6	11	7	-	4
APPEALS						
<i>Customs Act</i>	159	67	226	59	54	113
<i>Excise Tax Act</i>	173	23	196	5	55	136
SIMA	<u>35</u>	<u>29</u>	<u>64</u>	<u>-</u>	<u>63</u>	<u>1</u>
Total	367	119	486	64	172	250
ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES						
Textile Reference						
Requests for Tariff Relief	15	8	23	8 ²	10	5
Expiries ¹	1	-	1	1	-	-
Reviews	1	-	1	1	-	-
Economic, Trade and Tariff-Related Matters	-	-	-	-	-	-
PROCUREMENT REVIEW ACTIVITIES						
Complaints	15	53	68	27 ³	32	9

1. As a result of a different method of reporting expiries, the first column refers to expiries for which decisions had not been made prior to the end of the previous fiscal year. The fourth column refers to decisions to review.
2. The Tribunal actually issued 6 reports to the Minister of Finance which related to 8 requests for tariff relief.
3. The Tribunal actually issued 26 written determinations which related to 27 procurement complaints.

CHAPTER II

MANDATE, ORGANIZATION AND ACTIVITIES OF THE TRIBUNAL

Introduction

The Tribunal is an administrative tribunal operating within Canada's trade remedies system. It is an independent quasi-judicial body that carries out its statutory responsibilities in an autonomous and impartial manner and reports to Parliament through the Minister of Finance.

The main legislation governing the work of the Tribunal is the CITT Act, SIMA, the *Customs Act*, the *Excise Tax Act*, the *Canadian International Trade Tribunal Regulations* (CITT Regulations), the *Canadian International Trade Tribunal Procurement Inquiry Regulations* and the Tribunal's Rules of Procedure.

Mandate

The Tribunal's primary mandate is to:

- conduct inquiries into whether dumped or subsidized imports have caused, or are threatening to cause, material injury to a domestic industry;
- hear appeals of decisions of the CCRA made under the *Customs Act*, the *Excise Tax Act* and SIMA;
- conduct inquiries into complaints by potential suppliers concerning federal government procurement that is covered by the *North American Free Trade Agreement* (NAFTA), the *Agreement on Internal Trade* (AIT) and the World Trade Organization (WTO) *Agreement on Government Procurement* (AGP);
- conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their production operations;
- conduct safeguard inquiries into complaints by domestic producers that increased imports are causing, or threatening to cause, serious injury to domestic producers; and
- conduct inquiries and provide advice on such economic, trade and tariff issues as are referred to the Tribunal by the Governor in Council or the Minister of Finance.

Method of Operations

In carrying out most of its responsibilities, the Tribunal conducts inquiries with hearings that are open to the public. These are normally held in Ottawa, Ontario, the location of the Tribunal's offices, although hearings may also be held elsewhere in Canada, in person or through videoconferencing facilities. The Tribunal has rules and procedures similar to those of a court of law, but not quite as formal or strict. The CITT Act states that hearings, conducted generally by a panel of three members, should be carried out as "informally and expeditiously" as the circumstances and considerations of fairness permit. The Tribunal has the power to subpoena witnesses and require parties to submit information. The CITT Act contains provisions for the protection of confidential information. Only independent counsel who have filed declarations and confidentiality undertakings may have access to confidential information.

The Tribunal's decisions may be reviewed by or appealed to, as appropriate, the Federal Court of Canada and, ultimately, the Supreme Court of Canada, or a binational panel under NAFTA, in the case of a decision affecting U.S. and/or Mexican interests in SIMA. Governments that are members of the WTO may challenge some of the Tribunal's decisions before a dispute settlement panel under the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes*.

Membership

The Tribunal may be composed of nine full-time members, including a Chairman and two Vice-Chairs, who are appointed by the Governor in Council for a term of up to five years that is renewable one time. A maximum of five additional members may be temporarily appointed. The Chairman is the Chief Executive Officer responsible for the assignment of members and for the management of the Tribunal's work. Members come from a variety of educational backgrounds, careers and regions of the country.

Organization

Members of the Tribunal, currently 8 in number, are supported by a permanent staff of 86 people. Its principal officers are the Secretary, responsible for corporate management, relations with the public, dealings with other government departments and other governments, and the court registrar functions of the Tribunal; the Executive Director, Research, responsible for the investigative portion of the inquiries, for the economic and financial analysis of firms and industries and for other fact finding required for Tribunal inquiries; and the General Counsel, responsible for the provision of legal services to the Tribunal.

Consultations

The Tribunal, through the Tribunal/Canadian Bar Association Bench and Bar Committee, provides a forum to promote discussion on issues of importance with

Amendments to the Tribunal's Rules of Procedure

the bar. The committee also includes representatives from the trade consulting community. The Tribunal consults with the bar and representatives of industries and others that appear or that are likely to appear before the Tribunal to exchange views on new procedures being considered by the Tribunal prior to their distribution as guidelines or practice notices. The Tribunal also briefs federal government departments and trade associations on its procedures.

Bill C-35, amending SIMA and the CITT Act, received Royal Assent on March 25, 1999, and will be proclaimed into force on April 15, 2000. The amendments to the Tribunal's Rules of Procedure flow from the amendments to SIMA and the CITT Act.

The changes to the Tribunal's Rules of Procedure deal primarily with five areas: (1) notice provisions; (2) exchange of information between the Tribunal and the CCRA; (3) procedures governing the conduct of interim and expiry reviews of orders and findings; (4) disclosure of confidential information to counsel and expert witnesses; and (5) public interest.

The amended Rules of Procedure maintain the basic framework, and the changes are intended to provide comprehensive and transparent guidance to those appearing before the Tribunal. Their aim is also to facilitate fair and efficient Tribunal proceedings. The changes include:

- the establishment of a process for the timely and comprehensive exchange of information between parties before a hearing by way of requests for information;
- the establishment of earlier filing deadlines for certain types of documents, such as subpoenas and expert witness reports;
- the possibility of filing and serving documents by electronic transmission;
- the possibility of using three types of hearings, that is, oral hearings, hearings by way of written submissions and electronic hearings; and
- the defining of procedures for a less formal application process for parties to obtain direction and rulings of the Tribunal on specific matters, such as the filing and communication of confidential information, late submissions, postponements and adjournments.

Organization

CHAIRMAN

Pierre Gosselin

VICE-CHAIRS

Raynald Guay
Patricia M. Close

MEMBERS

Anita Szlazak*
Peter F. Thalheimer
Richard Lafontaine
Zdenek Kvarda
James A. Ogilvy
Arthur B. Trudeau**

SECRETARIAT

Secretary
Michel P. Granger

RESEARCH BRANCH

Executive Director of Research
Ronald W. Erdmann

LEGAL SERVICES BRANCH

General Counsel
Gerry Stobo

* Term expired during the fiscal year

** Temporary Member

Legislative Mandate of the Tribunal

Section	Authority
CITT Act	
18	Inquiries on Economic, Trade or Commercial Interests of Canada by Reference from the Governor in Council
19	Inquiries Into Tariff-related Matters by Reference from the Minister of Finance
19.01	Safeguard Inquiries Concerning Goods Imported from the United States and Mexico
19.02	Mid-term Reviews of Safeguard Measures and Report
20	Safeguard Inquiries Concerning Goods Imported Into Canada and Inquiries Into the Provision, by Persons Normally Resident Outside Canada, of Services in Canada
23	Safeguard Complaints by Domestic Producers
23(1.01) and (1.02)	Safeguard Complaints by Domestic Producers Concerning Goods Imported from the United States and Mexico
30.08 and 30.09	Safeguard Measures
30.11	Complaints by Potential Suppliers in Respect of Designated Contracts

SIMA (Anti-dumping and Countervailing Duties)

33, 34, 35 and 37	Advice to Commissioner
42	Inquiries With Respect to Injury Caused by the Dumping and Subsidizing of Goods
43	Findings of the Tribunal Concerning Injury
44	Recommencement of Inquiry (on Remand from the Federal Court of Canada or a Binational Panel)
45	Public Interest
61	Appeals of Re-determinations of the Commissioner Made Pursuant to Section 59 Concerning Whether Imported Goods are Goods of the Same Description as Goods to which a Tribunal Finding Applies, Normal Values and Export Prices or Subsidies
76	Reviews of Findings of Injury Initiated by the Tribunal or at the Request of the Commissioner or Other Interested Persons
76.1	Reviews of Findings of Injury Initiated at the Request of the Minister of Finance
89	Rulings on Who is the Importer

Legislative Mandate of the Tribunal (cont'd)

Section	Authority
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Customs Act

67	Appeals of Decisions of the Commissioner Concerning Value for Duty and Origin and Classification of Imported Goods
68	Appeals to the Federal Court of Canada
70	References of the Commissioner Relating to the Tariff Classification or Value for Duty of Goods

Excise Tax Act

81.19, 81.21, 81.22, 81.23, 81.25 and 81.33	Appeals of Assessments and Determinations of the Minister of National Revenue
81.32	Requests for Extension of Time for Objection or Appeal

Softwood Lumber Products Export Charge Act

18	Appeals of Assessments and Determinations of the Minister of National Revenue
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Energy Administration Act

13	Declarations Concerning the Amount of Oil Export Charge
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CHAPTER III

DUMPING AND SUBSIDIZING INJURY INQUIRIES AND REVIEWS

The Process

Under SIMA, Canadian producers may have access to anti-dumping and countervailing duties to offset unfair and injurious competition from goods exported to Canada:

- at prices lower than sales in the home market or lower than the cost of production (dumping), or
- that have benefited from certain types of government grants or other assistance (subsidizing).

The determination of dumping and subsidizing is the responsibility of the CCRA. The Tribunal determines whether such dumping or subsidizing has caused “material injury” or “retardation” or is threatening to cause material injury to a domestic industry.

A Canadian producer or an association of Canadian producers begins the process of seeking relief from alleged injurious dumping or subsidizing by making a complaint to the Commissioner of the CCRA. The Commissioner may then initiate a dumping or subsidizing investigation leading to a preliminary and then a final determination of dumping or subsidizing. The Tribunal commences its inquiry when the Commissioner issues a preliminary determination of dumping. The CCRA levies provisional duties on imports from the date of the preliminary determination of dumping.

Inquiries

When it commences an inquiry, the Tribunal seeks to make all interested parties aware of the inquiry. It issues a notice of commencement of inquiry that is published in the *Canada Gazette* and forwarded to all known interested parties.

In conducting inquiries, the Tribunal requests information from interested parties, receives representations and holds public hearings. Parties participating in these proceedings may conduct their own cases or be represented by counsel. The Tribunal staff carries out extensive research for each inquiry. The Tribunal sends questionnaires to domestic manufacturers, importers and purchasers and to foreign producers. Questionnaire responses are the primary source of information for staff reports. These reports focus on the factors that the Tribunal considers in arriving at decisions regarding material injury or retardation or threat of material

injury to a domestic industry. The reports become part of the case record and are made available to counsel and parties. Confidential or business-sensitive information is protected in accordance with provisions of the CITT Act. Only independent counsel who have filed declarations and confidentiality undertakings may have access to such confidential information.

The CITT Regulations prescribe factors that the Tribunal may consider in its determination of whether the dumping or subsidizing of goods has caused material injury or retardation or is threatening to cause material injury to a domestic industry. These factors include, among others, the volume of dumped or subsidized goods, the effects of the dumped or subsidized goods on prices and the impact of the dumped or subsidized goods on production, sales, market shares, profits, employment and utilization of production capacity.

The Tribunal holds a public hearing about 90 days after the commencement of the inquiry. At the public hearing, domestic producers attempt to persuade the Tribunal that the dumping or subsidizing of goods has caused material injury or retardation or is threatening to cause material injury to a domestic industry. Importers and exporters challenge the domestic producers' case. After cross-examination by parties and examination by the Tribunal, each side has an opportunity to respond to the other's case and to summarize its own. In many inquiries, the Tribunal calls witnesses who are knowledgeable about the industry and market in question. Parties may also seek exclusions from a Tribunal finding of material injury or retardation or threat of material injury to a domestic industry.

The Tribunal must issue its finding within 120 days from the date of the preliminary determination by the Commissioner. The Tribunal has an additional 15 days to issue a statement of reasons explaining its finding. A Tribunal finding of material injury or retardation or threat of material injury to a domestic industry is the legal authority for the imposition of anti-dumping or countervailing duties by the CCRA.

Advice Given Under Section 37 of SIMA

When the Commissioner decides not to initiate a dumping or subsidizing investigation because there is no reasonable indication of injury, the Commissioner or the complainant may, under section 33 of SIMA, refer the matter to the Tribunal for an opinion as to whether or not the evidence before the Commissioner discloses a reasonable indication that the dumping or subsidizing has caused material injury or retardation or is threatening to cause material injury to a domestic industry. When the Commissioner decides to initiate an investigation, a similar recourse is available to the Commissioner or any person or government under section 34 of SIMA. The same recourse is available under section 35 of SIMA, if the Commissioner terminates an investigation because of insufficient evidence of injury.

Section 37 of SIMA requires the Tribunal to render its advice within 30 days. The Tribunal makes its decision, without holding a public hearing, on the basis of the information before the Commissioner when the decision regarding initiation was reached.

The Tribunal issued three advices during the fiscal year. They concerned *Certain Iodinated Contrast Media* (Reference No. RE-99-001), *Certain Hot-rolled Carbon Steel Plate* (Reference No. RE-99-002) and *Certain Household Appliances* (Reference No. RE-99-003). In each of the three cases, the Tribunal concluded that the evidence before the Commissioner disclosed a reasonable indication that the dumping had caused material injury or was threatening to cause material injury to a domestic industry. The first two cases subsequently proceeded to inquiries under section 42 of SIMA before the end of the fiscal year.

Inquiries Completed in the Fiscal Year

The Tribunal completed four inquiries under section 42 of SIMA in the fiscal year. They concerned *Certain Stainless Steel Round Bar* (Inquiry No. NQ-98-003), *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (Inquiry No. NQ-98-004), *Certain Cold-rolled Steel Sheet Products* (Inquiry No. NQ-99-001) and *Certain Concrete Reinforcing Bar* (Inquiry No. NQ-99-002). In 1998, the Canadian markets for these products were estimated to be approximately \$30 million, \$2.8 billion, \$1.1 billion and \$290 million respectively. On April 14, 1999, following the acceptance of an undertaking by the Deputy Minister of National Revenue (the Deputy Minister), the Tribunal suspended its inquiry in *Certain Filter Tipped Cigarette Tubes* (Inquiry No. NQ-98-002).

Certain Stainless Steel Round Bar

NQ-98-003

*Finding:
Injury
(June 18, 1999)*

This inquiry involved dumped imports from the Republic of Korea (Korea). The sole domestic producer was Atlas Specialty Steels, A Division of Atlas Steels Inc. (Atlas).

This was the second inquiry during a 12-month period concerning the dumping of stainless steel round bar. In Inquiry No. NQ-98-001, the Tribunal made a finding of material injury respecting stainless steel round bar originating in or exported from the Federal Republic of Germany (Germany), France, India, Italy, Japan, Spain, Sweden, Taiwan and the United Kingdom. In its statement of reasons, the Tribunal advised the Deputy Minister, under section 46 of SIMA, that, based on the evidence before it, certain stainless steel round bar originating in or exported from Korea was being dumped in the Canadian market and that the dumping was threatening to cause injury to the domestic industry. Subsequent to this advice, on November 16, 1998, Atlas filed a dumping complaint with the Deputy Minister respecting certain stainless steel round bar from Korea, and the Deputy Minister initiated an investigation.

***Certain Flat Hot-rolled
Carbon and Alloy
Steel Sheet Products***

NQ-98-004

*Finding:
Injury
(July 2, 1999)*

In the previous case, dumping from the nine named countries had caused Atlas to lose sales and market share and had forced it to lower prices, which led to reduced revenues and lost profits. In the current case, Atlas had benefited from the injury finding against the nine named countries, as it was able to increase its sales volume and market share. However, it continued to face competition from low price offerings from Korea and other countries. Consequently, Atlas was forced to continue discounting its prices and suffered injury in the form of price erosion. In addition, Atlas was unsuccessful in its attempt to increase prices in order to recover some of the losses that it had incurred earlier. The Tribunal, therefore, also found injury in the form of price suppression. After consideration of all relevant factors, the Tribunal was satisfied from the evidence that Korean imports materially injured the domestic industry.

This inquiry involved dumped imports from France, Romania, the Russian Federation and the Slovak Republic. There were five Canadian producers of hot-rolled steel sheet: Stelco Inc. (Stelco) of Hamilton, Ontario; Dofasco Inc. (Dofasco) of Hamilton; Algoma Steel Inc. (Algoma) of Sault Ste. Marie, Ontario; IPSCO Inc. of Regina, Saskatchewan; and Ispat Sidbec Inc. (Ispat) of Montréal, Quebec. Several importers and end users, as well as exporters from France, Romania and the Russian Federation, participated in the inquiry.

The full impact of the substantial quantities of dumped imports on prices in the market became apparent in the fourth quarter of 1998 and in the first quarter of 1999, as the domestic industry's production capacity utilization declined. In the third quarter of 1998, with the beginning of the General Motors strike and the continuing softness of the oil country tubular goods market and certain other industries, the domestic industry began discounting the price of like goods. It continued to do so through the first quarter of 1999 to meet the dumped import competition. Domestic producers experienced serious price declines, particularly in the pipe and tube and service centre sectors, which resulted in a major decline in the overall price level of hot-rolled steel sheet. These lower prices resulted in a significant negative impact on the revenues and profitability of the domestic producers of hot-rolled steel sheet, especially in the latter part of 1998 and in the first quarter of 1999.

Although the Tribunal found that the domestic producers of hot-rolled steel sheet experienced a significant loss of market share, it was of the opinion that the loss of market share was, in part, the result of supply constraints in 1997 and the first two quarters of 1998 and the result of the domestic industry's unwillingness to meet the low prices of dumped imports.

***Certain Cold-rolled
Steel Sheet Products***

NQ-99-001

*Finding:
No injury and threat of
injury
(August 27, 1999)*

The Tribunal concluded that the material injury suffered by the domestic industry in the form of price erosion was caused primarily by the low prices at which dumped imports were being sold in the Canadian market.

The Tribunal excluded from its finding certain hot-rolled cut-to-length manganese alloy steel sheet products.

This inquiry involved dumped imports from Argentina, Belgium, New Zealand, the Russian Federation, the Slovak Republic, Spain and the Republic of Turkey (Turkey). The domestic industry consisted of the four Canadian producers of cold-rolled steel sheet products: Dofasco, Stelco, Ispat and Algoma. Several importers and end users, as well as exporters from the subject countries, participated in the inquiry.

The Tribunal found that the volumes of dumped goods from New Zealand and Spain were negligible. In a separate injury analysis, the Tribunal found that these imports had not caused and did not threaten to cause material injury to the domestic industry.

The Tribunal made a cumulative analysis of the effects on the domestic industry of dumped imports from Argentina, Belgium, the Russian Federation, the Slovak Republic and Turkey. It concluded that there was material injury to the domestic industry in 1998, since there was a loss of sales volume, price erosion and price suppression, with a reduction of almost one third in the industry's net income before taxes for cold-rolled steel sheet products between 1997 and 1998. However, in the Tribunal's view, there were many causes of the material injury in 1998. These included a contraction in the domestic market of 5 percent, an oversupply of cold-rolled steel sheet in the global market, a decline in world cold-rolled steel spot prices, an increase in the cost of goods manufactured by two of the domestic producers, the General Motors strike in the third quarter of 1998, production problems experienced by two of the domestic producers, a surge of non-subject Korean imports in 1998, and a significant volume of sales of dumped goods from the cumulated countries at service centres. The Tribunal did not find a sufficient causal link between the dumped imports and changes in the domestic industry's prices or its lost sales.

However, the Tribunal found that, in the absence of an injury finding, imports from these countries would threaten to cause material injury to the domestic industry. In reaching this conclusion, the Tribunal took into account the growth in imports from 1996 to 1998, low capacity utilization rates, the importance of exports as a way of maintaining capacity utilization, trade measures in place in other countries against Russian cold-rolled steel sheet and against Russian and Slovak hot-rolled steel sheet products in Canada, and the falling prices of the

***Certain Concrete
Reinforcing Bar***

NQ-99-002

*Finding:
Injury
(January 12, 2000)*

Belgian, Russian, Slovak and Turkish goods. In reaching this conclusion, the Tribunal found that factors other than dumping would not cause material injury in the near future. The Tribunal found that sales from imports from Korea in the first quarter of 1999 were only a small percentage of its sales volume in the fourth quarter of 1998, suggesting a withdrawal of Korea from the Canadian market. With respect to the other factors that had been affecting the domestic industry in 1998, the Tribunal considered that they had run their course and would not be continuing influences on domestic producers.

The Tribunal excluded Argentina from its finding of threat of material injury, concluding that the expected volume of imports would not threaten domestic prices in the near future.

This inquiry concerned dumped imports of certain concrete reinforcing bar from the Republic of Cuba (Cuba), Korea and Turkey. The domestic industry consisted of eight Canadian producers of rebar: Co-Steel Inc. of Toronto, Ontario; Ispat; Stelco; AltaSteel of Edmonton, Alberta; Stelco McMaster Ltée. of Contrecoeur, Quebec; Gerdau Courtice Steel Inc. of Cambridge, Ontario; Gerdau MRM Steel Inc. of Selkirk, Manitoba; and Slater Steel Inc. of North York, Ontario. Several exporters from the subject countries participated in the inquiry.

The Tribunal found that the domestic producers of rebar experienced a significant loss of market share. In addition, to combat the market share losses, they were forced to reduce selling prices, leading to reductions in revenue and profitability, especially in the latter part of 1998 and in the first half of 1999. The Tribunal found that the magnitude of the market share losses, the price declines and the resulting financial losses were such as to conclude that the domestic producers had been materially injured. The Tribunal concluded that the material injury suffered by the domestic industry was caused by the low prices at which large volumes of dumped imported rebar were being sold in the Canadian market. Furthermore, the lost sales and the price erosion accounted for a significant proportion of the decline in financial performance experienced by the domestic industry in the latter part of 1998 and in the first half of 1999.

The Tribunal also considered whether factors other than dumping caused any injury suffered by the domestic producers. These factors included decreased scrap steel prices, the ability of the domestic industry to supply the market, a switch to higher-margin products, recent developments in the world market for rebar, imports of rebar from non-subject countries, principally the United States, and the international competitiveness of Canadian producers of rebar. The Tribunal determined that none of these other factors individually or collectively satisfactorily explained the injury suffered by the domestic industry.

Inquiries in Progress at the End of the Fiscal Year

There were two inquiries in progress at the end of the fiscal year: *Iodinated Contrast Media* (Inquiry No. NQ-99-003) and *Certain Carbon Steel Plate* (Inquiry No. NQ-99-004).

The inquiry on iodinated contrast media concerns dumped imports from the United States. The sole domestic producer is Mallinckrodt Medical, Inc., of Pointe-Claire, Quebec. Nycomed Canada Inc., Nycomed Amersham Canada Limited and Bracco Diagnostics Canada Inc. are parties to the inquiry.

The inquiry on certain carbon steel plate concerns dumped imports from the Federative Republic of Brazil (Brazil), Finland and the Ukraine and dumped and subsidized imports from India, Indonesia and Thailand. The domestic producers are Algoma, Stelco and IPSCO Inc. of Regina, Saskatchewan. The exporters that are parties to the inquiry are Azovstal Iron & Steel Works (Ukraine), Usinas Siderúrgicas de Minas Gerais S.A (Brazil), Companhia Siderúrgica Paulista (Brazil) and Steel Authority of India Limited (India).

Table 1 summarizes the Tribunal's inquiry activities during the fiscal year.

Public Interest Consideration Under Section 45 of SIMA

Where, after a finding of injury or threat of injury, the Tribunal is of the opinion that the imposition of anti-dumping or countervailing duties may not be in the public interest, it reports this opinion to the Minister of Finance with a statement of the facts and reasons that led to its conclusions and recommendations. The Minister of Finance decides whether there should be a reduction in duties.

During the injury inquiry, interested parties may make a request to make representations to the Tribunal on the matter of public interest. Representations may be made after the completion of the inquiry. The Tribunal will then conduct a public interest investigation if it considers that there is a public interest concern worthy of further investigation.

The Tribunal received one request for a public interest investigation during the fiscal year. On August 3, 1999, the Tribunal received a joint request from Atlas Tube Inc., Bolton Steel Tube Co. Ltd. and Thyssen Canada Limited for a public interest investigation to eliminate the anti-dumping duties on the subject goods originating in or exported from Romania and the Russian Federation as a result of the Tribunal's injury finding in *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (Inquiry No. NQ-98-004). On August 19 and 20, 1999, Stelco, Dofasco, Algoma, IPSCO and Ispat made submissions opposing a public interest investigation. The Tribunal received several other submissions opposing a public interest investigation. On September 20, 1999, in its consideration (Public Interest Investigation No. PB-99-001), the Tribunal found that the joint request

did not reflect a public interest which warranted further investigation. Accordingly, the Tribunal did not conduct a public interest investigation into the matter.

Importer Ruling

Under section 90 of SIMA, the Commissioner may request the Tribunal to rule on the question as to which of two or more persons is the importer of goods on which anti-dumping or countervailing duties are payable. If the Tribunal identifies as the importer a person other than the one specified by the Commissioner, the Tribunal may reconsider its original finding of material injury under section 91.

There were no requests for an importer ruling in the fiscal year.

Requests for Review

The Tribunal may review its findings of injury or orders at any time, on its own initiative or at the request of the Commissioner or any other person or government (subsection 76(2) of SIMA). However, the Tribunal will initiate a review only if it determines that one is warranted, usually on the basis of changed circumstances. In such a review, the Tribunal determines if the changed circumstances are such that the finding or order remains necessary.

There were no requests for review in the fiscal year.

Expiries and Reviews

Subsection 76(5) of SIMA provides that a finding or order expires after five years, unless a review has been initiated. It is Tribunal policy to notify parties nine months prior to the expiry date of a finding or order. If a review is requested, the Tribunal will initiate one if it determines that it is warranted.

During the fiscal year, the Tribunal issued nine notices of expiry. The Tribunal decided that reviews were warranted in six cases and initiated reviews. In *Refill Paper* (Expiry No. LE-99-005), the Tribunal received a request for the initiation of a review, but decided that a review was not warranted. In *Photo Albums* (Expiry No. LE-99-006) and in *Caps, Lids and Jars* (Expiry No. LE-99-008), there were no requests for the initiation of reviews.

The purpose of a review is to determine whether anti-dumping or countervailing duties remain necessary. In the case of reviews upon expiry, the Tribunal assesses whether dumping or subsidizing is likely to continue or resume and, if so, whether the dumping or subsidizing is likely to cause material injury to a domestic industry. The Tribunal's procedures in reviews are similar to those in inquiries.

Reviews Completed in the Fiscal Year

Upon completion of a review, the Tribunal issues an order with reasons, rescinding or continuing a finding or order, with or without amendment. If the Tribunal continues a finding or order, it remains in force for a further five years, unless a review has been initiated and the finding or order is rescinded. If the finding or order is rescinded, imports are no longer subject to anti-dumping or countervailing duties.

In the fiscal year, the Tribunal completed seven reviews.

On April 21, 1999, the Tribunal rescinded its finding in *Synthetic Baler Twine* (Review No. RR-98-003) respecting dumped imports from the United States. The Tribunal reached this conclusion after determining that, in the absence of economic and financial information from the major domestic producer, it could not make a finding on the likelihood of material injury to a major proportion of domestic production.

On May 17, 1999, the Tribunal continued its finding in *Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate* (Review No. RR-98-004) respecting dumped imports from Italy, Korea, Spain and the Ukraine. Algoma, Stelco and IPSCO, domestic producers accounting for most of Canadian production, and several exporters from Korea, Spain and the Ukraine participated in the review.

On June 22, 1999, the Tribunal continued its finding in *12-gauge Shotshells* (Review No. RR-98-005) respecting dumped imports from the Czech Republic and the Republic of Hungary. The Société d'expansion commerciale Libec Inc., Sainte-Justine-de-Newton, Quebec, a domestic producer accounting for most of Canadian production, participated in the review.

On July 19, 1999, the Tribunal continued its finding in *Black Granite Memorials and Black Granite Slabs* (Review No. RR-98-006) respecting dumped and subsidized imports from India. The Canadian Granite Association, representing most domestic producers, an exporter and an importer, as well as the Government of India, participated in the review.

On July 28, 1999, in *Certain Corrosion-resistant Steel Sheet Products* (Review No. RR-98-007), the Tribunal rescinded its finding respecting dumped imports from Australia, France, New Zealand, Spain, Sweden and the United Kingdom and continued its finding, excluding certain corrosion resistant steel products for automotive use, respecting imports from the United States, Brazil, Germany, Japan and Korea. Three domestic producers, Dofasco, Stelco and Sorevco, two importers and several exporters from Brazil, France, Germany, Korea, Spain and the United States, as well as several Canadian automotive stampers, participated in the review.

Reviews in Progress at the End of the Fiscal Year

Judicial or Panel Review of SIMA Decisions

On February 8, 2000, the Tribunal rescinded its finding in *Fresh, Whole, Delicious and Red Delicious Apples* (Review No. RR-99-001) respecting dumped imports from the United States. The Canadian Horticultural Council, representing domestic growers, the Northwest Horticultural Council, representing Washington State growers and exporters, and the Ontario Produce Marketing Association participated in the review.

On March 20, 2000, in *Subsidized Canned Ham and Canned Pork-based Luncheon Meat* (Review No. RR-99-002), the Tribunal continued its finding respecting subsidized imports of canned ham from Denmark and the Netherlands and rescinded its finding respecting subsidized imports of canned pork-based luncheon meat from the European Union. The Canadian Meat Council and Maple Leaf Consumer Foods, the sole Canadian producer of canned ham and the main Canadian producer of canned luncheon meat, and an importer participated in the review. The European Union also made submissions in the review.

Four reviews were in progress at the end of the fiscal year. They were reviews of the findings and orders in: (1) *Women's Boots and Women's Shoes* (Review No. RR-99-003) respecting dumped imports from the People's Republic of China (China); (2) *Carbon Steel Welded Pipe* (Review No. RR-99-004) respecting dumped imports from Korea; (3) *Whole Potatoes* (Review No. RR-99-005) respecting dumped imports from the United States; and (4) *Refined Sugar* (Review No. RR-99-006) respecting dumped imports from the United States, Denmark, Germany, the Netherlands and the United Kingdom and subsidized imports from the European Union.

Table 2 summarizes the Tribunal's review activities during the fiscal year. Table 3 lists Tribunal findings and orders in force as of March 31, 2000.

Any person affected by Tribunal findings or orders can request judicial review by the Federal Court of Canada on grounds of alleged denial of natural justice and error of fact or law. In cases involving goods from the United States and Mexico, requests may be made for judicial review by the Federal Court of Canada or for panel review by a binational panel. Table 4 lists the Tribunal's decisions under section 43, 44 or 76 of SIMA that were before the Federal Court of Canada for judicial review or a binational panel for review in the fiscal year.

During the fiscal year, the Federal Court of Canada affirmed the Tribunal's findings in *Certain Stainless Steel Round Bar* (Inquiry No. NQ-98-001) and in *Certain Hot-rolled Carbon Steel Plate* (Review No. RR-97-006). At the end of the fiscal year, the Federal Court of Canada had not yet heard applications to review the Tribunal's orders in *Certain Cold-rolled Steel Sheet* (Review

WTO Dispute Resolution

No. RR-97-007) and in *Certain Corrosion-resistant Steel Sheet Products* (Review No. RR-98-007).

During the fiscal year, binational panels affirmed on remand the Tribunal's finding (Mexico) in *Certain Hot-rolled Carbon Steel Plate* (Inquiry No. NQ-97-001) and its finding (United States) in *Certain Prepared Baby Foods* (Inquiry No. NQ-97-002). Also at the end of the fiscal year, binational panels had heard the applications to review but had not yet issued decisions regarding the Tribunal's orders (United States) in *Certain Cold-rolled Steel Sheet* (Review No. RR-97-007) and in *Certain Copper Pipe Fittings* (Review No. RR-97-008).

Governments that are members of the WTO may challenge Tribunal injury findings or orders in dumping and countervailing cases before the WTO dispute settlement bodies. This is initiated by inter-governmental consultations. There are no Tribunal findings or orders before the dispute settlement bodies of the WTO.

TABLE 1

Findings Issued Under Section 43 of SIMA Between April 1, 1999, and March 31, 2000, and Inquiries Under Section 42 of SIMA in Progress at Year End

Inquiry No.	Product	Country	Date of Finding/Decision	Finding/Decision
NQ-98-002	Certain Filter Tipped Cigarette Tubes	France	April 14, 1999	Inquiry suspended
NQ-98-003	Certain Stainless Steel Round Bar	Korea	June 18, 1999	Injury
NQ-98-004	Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products	France, Romania, Russian Federation and Slovak Republic	July 2, 1999	Injury
NQ-99-001	Certain Cold-rolled Steel Sheet Products	New Zealand, Spain and Argentina	August 27, 1999	No injury
		Belgium, Russian Federation, Slovak Republic and Turkey		Threat of injury
NQ-99-002	Certain Concrete Reinforcing Bar	Cuba, Korea and Turkey	January 12, 2000	Injury
NQ-99-003	Iodinated Contrast Media	United States (including the Commonwealth of Puerto Rico)	In progress	
NQ-99-004	Certain Carbon Steel Plate	Brazil, Finland, India, Indonesia, Thailand and Ukraine	In progress	

TABLE 2

Orders Issued Under Section 76 of SIMA Between April 1, 1999, and March 31, 2000, and Reviews in Progress at Year End

Review No. or Expiry No.	Product	Country	Date of Order	Order
RR-98-003	Synthetic Baler Twine	United States	April 21, 1999	Finding rescinded
RR-98-004	Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate	Italy, Korea, Spain and Ukraine	May 17, 1999	Finding continued
RR-98-005	12-gauge Shotshells	Czech Republic and Republic of Hungary	June 22, 1999	Finding continued
RR-98-006	Black Granite Memorials and Black Granite Slabs	India	July 19, 1999	Finding continued
RR-98-007	Certain Corrosion-resistant Steel Sheet Products	Brazil, Germany, Japan and Korea	July 28, 1999	Finding continued
		United States		Finding continued
		Australia, France, New Zealand, Spain, Sweden and United Kingdom		Finding rescinded
LE-99-005	Refill Paper	Brazil	November 16, 1999	Review not warranted
RR-99-001	Fresh, Whole, Delicious and Red Delicious Apples	United States	February 8, 2000	Finding rescinded
RR-99-002	Subsidized Canned Ham	Denmark and Netherlands	March 20, 2000	Order continued
	Canned Pork-based Luncheon Meat	European Union		Order rescinded
RR-99-003	Women's Boots and Women's Shoes	China	In progress	
RR-99-004	Carbon Steel Welded Pipe	Korea	In progress	
RR-99-005	Whole Potatoes	United States	In progress	
RR-99-006	Refined Sugar	United States, Denmark, Germany, Netherlands, United Kingdom and European Union	In progress	

TABLE 3

SIMA Findings and Orders in Force as of March 31, 2000¹

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
RR-94-003	May 2, 1995	Women's Boots and Women's Shoes	China	NQ-89-003 (May 3, 1990)
RR-94-004	June 5, 1995	Carbon Steel Welded Pipe	Korea	ADT-6-83 (June 28, 1983) RR-89-008 (June 5, 1990)
RR-94-007	September 14, 1995	Whole Potatoes	United States	ADT-4-84 (June 4, 1984) CIT-16-85 (April 18, 1986) RR-89-010 (September 14, 1990)
NQ-95-002	November 6, 1995	Refined Sugar	United States, Denmark, Germany, Netherlands, United Kingdom and European Union	
RR-95-001	July 5, 1996	Oil and Gas Well Casing	Korea and United States	CIT-15-85 (April 17, 1986) R-7-86 (November 6, 1986) RR-90-005 (June 10, 1991)
RR-95-002	July 25, 1996	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand, Venezuela and Brazil	NQ-90-005 (July 26, 1991) NQ-91-003 (January 23, 1992)
RR-96-001	September 12, 1996	Stainless Steel Welded Pipe	Taiwan	NQ-91-001 (September 5, 1991)
NQ-96-002	March 21, 1997	Fresh Garlic	China	
NQ-96-003	April 11, 1997	Polyiso Insulation Board	United States	
RR-96-004	April 21, 1997	Machine Tufted Carpeting	United States	NQ-91-006 (April 21, 1992)
NQ-96-004	June 27, 1997	Concrete Panels	United States	
RR-97-001	October 20, 1997	Waterproof Rubber Footwear	China	ADT-2-82 (April 23, 1982) R-7-87 (October 22, 1987) RR-92-001 (October 21, 1992)
NQ-97-001	October 27, 1997	Certain Hot-rolled Carbon Steel Plate	Mexico, China, Republic of South Africa and Russian Federation	

1. To determine the precise product coverage, refer to the findings or orders as identified in the first column of the table.

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
RR-97-002	November 28, 1997	Fresh Iceberg (Head) Lettuce	United States	NQ-92-001 (November 30, 1992)
RR-97-003	December 10, 1997	Bicycles and Frames	Taiwan and China	NQ-92-002 (December 11, 1992)
NQ-97-002	April 29, 1998	Certain Prepared Baby Foods	United States	
RR-98-001	November 18, 1998	Preformed Fibreglass Pipe Insulation	United States	NQ-93-002 (November 19, 1993)
NQ-98-001	September 4, 1998	Certain Stainless Steel Round Bar	Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and United Kingdom	
RR-98-004	May 17, 1999	Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate	Italy, Korea, Spain and Ukraine	NQ-93-004 (May 17, 1994)
RR-98-005	June 22, 1999	12-gauge Shotshells	Czech Republic and Republic of Hungary	NQ-93-005 (June 22, 1994)
RR-98-006	July 19, 1999	Black Granite Memorials and Black Granite Slabs	India	NQ-93-006 (July 20, 1994)
RR-98-007	July 28, 1999	Certain Corrosion-resistant Steel Sheet Products	Brazil, Germany, Japan, Korea and United States	NQ-93-007 (July 29, 1994)
NQ-98-003	June 18, 1999	Certain Stainless Steel Round Bar	Korea	
NQ-98-004	July 2, 1999	Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products	France, Romania, Russian Federation and Slovak Republic	
NQ-99-001	August 27, 1999	Certain Cold-rolled Steel Sheet Products	Belgium, Russian Federation, Slovak Republic and Turkey	
NQ-99-002	January 12, 2000	Certain Concrete Reinforcing Bar	Cuba, Korea and Turkey	
RR-99-002	March 20, 2000	Subsidized Canned Ham	Denmark and Netherlands	GIC-1-84 (August 7, 1984) RR-89-003 (March 16, 1990) RR-94-002 (March 21, 1995)

TABLE 4

SIMA Cases Before the Federal Court of Canada or a Binational Panel Between April 1, 1999, and March 31, 2000

Case No.	Product	Country of Origin	Forum	Date Filed	File No./ Status
NQ-97-001	Certain Hot-rolled Carbon Steel Plate	Mexico	BP	November 28, 1997	CDA-97-1904-02 Finding remanded in part Determination on remand affirmed
				July 12, 1999	CDA-MEX-99-1904-01
NQ-97-002	Certain Prepared Baby Foods	United States	BP	June 5, 1998	CDA-USA-98-1904-01 Decision affirmed
NQ-98-001	Certain Stainless Steel Round Bar	Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and United Kingdom	FC	October 2, 1998	A—591—98 Decision affirmed
NQ-98-004	Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products	France, Romania, Russian Federation and Slovak Republic	FC	July 30, 1999	A—472—99 Appeal discontinued
RR-97-006	Certain Hot-rolled Carbon Steel Plate	Belgium, Brazil, Czech Republic, Denmark, Germany, Romania, United Kingdom and Former Yugoslav Republic of Macedonia	FC	June 4, 1998	A—365—98 Decision affirmed
RR-97-007	Certain Cold-rolled Steel Sheet	Germany, France, Italy, United Kingdom and United States	BP	September 1, 1998	CDA-USA-98-1904-02
			FC	August 27, 1998	A—483—98/ A—484—98/ A—514—98/ A—515—98
RR-97-008	Certain Copper Pipe Fittings	United States	BP	November 20, 1998	CDA-USA-98-1904-03
RR-98-007	Certain Corrosion-resistant Steel Sheet Products	Brazil, Germany, Japan, Korea and United States	FC	September 2, 1999	A—236—99

Note: FC — Federal Court of Canada
BP — Binational Panel

CHAPTER IV

APPEALS

Introduction

The Tribunal hears appeals from decisions of the Commissioner under the *Customs Act* and SIMA or of the Minister of National Revenue (the Minister) under the *Excise Tax Act*. The Tribunal hears appeals relating to the tariff classification and value for duty of goods imported into Canada and relating to the origin of goods imported from the United States, Mexico and Chile under the *Customs Act*. The Tribunal also hears and decides appeals concerning the application, to imported goods, of a Tribunal finding or order concerning dumping or subsidizing and the normal value or export price or subsidy of imported goods under SIMA. Under the *Excise Tax Act*, a person may appeal to the Tribunal the decision of the Minister about an assessment or determination of federal sales tax or excise tax.

The Tribunal strives to be informal and accessible. However, there are certain procedures and time constraints that are imposed by law and by the Tribunal. For example, the appeal process is set in motion with a notice (or letter) of appeal, in writing, sent to the Secretary of the Tribunal within the time limit specified in the act under which the appeal is made.

Rules of Procedure

Under the Tribunal's Rules of Procedure, the person launching the appeal (the appellant) normally has 60 days to submit to the Tribunal a document called a "brief". Generally, the brief states under which act the appeal is launched, gives a description of the goods in issue and an indication of the points at issue between the appellant and the Minister or Commissioner (the respondent) and states why the appellant believes that the respondent's decision is incorrect. A copy of the brief must also be given to the respondent.

The respondent must also comply with time and procedural constraints. Normally, within 60 days after having received the appellant's brief, the respondent must provide the Tribunal and the appellant with a brief setting forth the CCRA's position. The Secretary of the Tribunal then contacts both parties in order to schedule a hearing. Hearings are generally conducted before Tribunal members in public. Depending on the complexity and precedential nature of the matter at issue, appeals will be heard by a panel of one or three members. Persons may intervene in an appeal by specifying the nature of their interest in the appeal and by indicating the reason for intervening and how they may assist the Tribunal in the resolution of the appeal.

Hearings

An individual may present a case before the Tribunal in person, or be represented by legal counsel or by any other representative. The respondent is generally represented by counsel from the Department of Justice.

Hearing procedures are designed to ensure that the appellant and the respondent are given a full opportunity to make their case. They also enable the Tribunal to have the best information possible to make a decision. As in a court, the appellant and the respondent can call witnesses, and these witnesses are questioned under oath or affirmation by the opposing parties, as well as by Tribunal members, in order to test the validity of their evidence. When all the evidence is gathered, parties may present arguments in support of their respective position.

The Tribunal, on its own initiative or on the request of the appellant or the respondent, may decide to hold a hearing by way of written submissions. In that case, the Tribunal publishes a notice of the hearing in the *Canada Gazette* so that other interested persons can make their views known. In the notice, the Tribunal establishes the manner and timing for filing the submissions and the requirement, if appropriate, for the parties to file an agreed statement of facts.

The Tribunal also hears appeals by way of electronic transmission, either by teleconference or videoconference.

Teleconference hearings are used mainly to dispose of preliminary motions and jurisdictional issues where witnesses are not required to attend or give evidence.

Videoconference hearings are used as an alternative to holding hearings in locations across Canada or requiring parties from outside Ontario or Quebec to present themselves at the Tribunal's premises in Ottawa. The procedures are very similar to hearings held before the Tribunal at its premises. However, the Tribunal requires that written materials, exhibits, aids to arguments, etc., be filed with the Tribunal prior to the videoconference hearing.

Usually, within 120 days of the hearing, the Tribunal issues a decision on the matters in dispute, including the reasons for its decision.

If the appellant, the respondent or an intervener disagrees with the Tribunal's decision, the decision can be appealed to the Federal Court of Canada.

Appeals Considered

During the fiscal year, the Tribunal heard 60 appeals of which 55 related to the *Customs Act* and 5 to the *Excise Tax Act*. Decisions were issued in 64 cases, of which 42 were heard during the fiscal year.

Decisions on Appeals

Act	Allowed	Allowed in Part	Dismissed	Total
<i>Customs Act</i>	18	1	41	60
<i>Excise Tax Act</i>	-	-	4	4
SIMA	-	-	-	-

Table 1 of this chapter lists the appeal decisions rendered in the fiscal year.

Summary of Selected Decisions

The following are summaries of a representative sample of significant decisions in appeals under section 67 of the *Customs Act*. These summaries have been prepared for general information purposes only and have no legal status.

Reha Enterprises and Cosmetic Import v. DMNR

*AP-98-053 and
AP-98-054*

*Decision:
Appeals dismissed
(October 28, 1999)*

These were appeals regarding classification from decisions of the Deputy Minister made under subsection 63(3) of the *Customs Act*. Prior to the hearing, the parties agreed that the goods in issue were not soap, but organic surface-active products and preparations. The appeals dealt with two products: Ombra and Fa. The Tribunal had to determine whether Ombra body wash, in various fragrances, was properly classified under tariff item No. 3305.10.00 as shampoo, as determined by the respondent, or should have been classified under tariff item No. 3401.11.90 as other organic surface-active products for toilet use or under tariff item No. 3401.20.90 as other liquid soap, as claimed by Reha Enterprises Ltd. It also had to determine whether Fa shower gel, in various fragrances, was properly classified under tariff item No. 3307.90.00 as other toilet preparations, as determined by the respondent, or, as argued by counsel for the respondent at the hearing, under tariff item No. 3307.30.00 as other bath preparations, or should have been classified under tariff item No. 3401.11.90 as other organic surface-active products for toilet use or under tariff item No. 3401.20.90 as other liquid soap, as claimed by Cosmetic Import Co. Limited. It also considered whether another heading would be more accurate, such as heading No. 34.02, organic surface-active agents (other than soap).

The Tribunal first considered whether the goods should be classified as a preparation for use on the hair, i.e. shampoo. It reviewed the products and the

directions for use as a body wash, in conjunction with the common and ordinary meaning of the word “shampoo”. While the Tribunal accepted that the products may be a substitute for shampoo, the products were used most notably for washing the body. The Tribunal was not persuaded to classify the products as a preparation for the use on the hair or as shampoo in heading No. 33.05.

The Tribunal examined whether the products should be classified as organic surface-active products and preparations for toilet use or as other liquid soaps in heading No. 34.01. The wording to heading No. 34.01 expressly excludes organic surface-active products which are not in the form of bars, cakes, moulded pieces or shapes. The Tribunal was not persuaded to broaden the scope or coverage of heading No. 34.01 to include more forms than those expressly provided for in the words of that heading.

The Tribunal then had to consider whether the products should be classified in heading No. 33.07 as either bath preparations or toilet preparations. The Tribunal determined that heading No. 33.07 is intended to cover goods which play only a secondary role in the act of washing one’s body and, at best, the soaps or organic surface-active agents contemplated in this heading would have a passive role in cleaning the body and only because of their presence in the bath water. With respect to toilet preparations, the Tribunal looked at the interpretation of the phrase “toilet preparations” and was not persuaded that the products, described on their labels as preparations used for washing oneself, were properly covered by that expression. Therefore, the products were not classified in heading No. 33.07.

It was evident to the Tribunal that none of the headings adequately described the goods in issue. In view of the difficulties that the Tribunal encountered in attempting to classify the goods in issue according to the headings proposed by the parties, the Tribunal reviewed other headings. It found authority in subsection 67(3) of the *Customs Act*, which directs it to “make such order, finding or declaration as the nature of the matter may require”. The Tribunal considered that this subsection allowed it to classify a product without accepting either party’s choice, in cases where it is appropriate to do so; in other words, to arrive at what it considers to be the correct classification. This was consistent with the Tribunal’s reasons in earlier decisions: *Research Products/Blankenship of Canada v. DMNR* and *Rigel Shipping Canada v. DMNR*. While this happens only occasionally, it is an important tool available to the Tribunal to ensure that the correct classification, based on the evidence, is given to a product.

In addition to the classification options proposed by the parties, the Tribunal also considered the applicability of heading No. 34.02 as it read before the February 1998 changes. The Tribunal was of the view that heading No. 34.02 was

a reasonable alternative to consider, as the ones proposed by the parties had significant obstacles to the classification of the goods in issue. On the face of it, both Ombra and Fa could fall in this heading. Heading No. 34.02 does not limit the goods in issue as do heading Nos. 34.01 (organic surface-active products in the form of bars, cakes, moulded pieces or shapes), 33.05 (shampoos) and 33.07 (bath and toilet preparations). Therefore, the Tribunal was of the view that it was not unreasonable to consider heading No. 34.02 as one that might accommodate the classification of the products at the time of their importation.

The Tribunal agreed that it had to consider the *Customs Tariff* as it existed on the date of importation of the goods in issue. However, it was of the view that it would be irresponsible to ignore the relevant amendments to the *Explanatory Notes to the Harmonized Commodity Description and Coding System* which help to confirm or clarify the classification of an imported product. This is particularly so where the classification of imports is very difficult, if not impossible, taking into account the heading, the *Explanatory Notes*, etc. as they were at the time of importation. The Tribunal was of the view that the 1998 amendments confirmed the appropriateness of classifying the goods in issue in subheading No. 3402.20 as surface-active preparations put up for retail sale.

**Asea Brown Boveri v.
DMNR**

AP-97-137

Decision:
Appeal dismissed
(December 21, 1999)

This was an appeal from a decision of the Deputy Minister made under section 63 of the *Customs Act*. There were two issues: (1) whether the respondent's decision under appeal was made in accordance with section 63 or 64 and, therefore, whether the Tribunal had jurisdiction to hear the appeal; and (2) whether the goods in issue qualified for duty relief under Code 2101 as articles for use in the goods of tariff item No. 9032.89.20 as process control apparatus, excluding sensors, which converts analog signals from or to digital signals.

The Tribunal derives its jurisdiction from section 67 of the *Customs Act* which, at the relevant time, stated that the Tribunal could hear appeals of the respondent's decisions made pursuant to section 63 or 64. If the decision or any aspect of it before the Tribunal was not one made pursuant to section 63 or 64, then the Tribunal was of the opinion that it had no jurisdiction to hear an appeal from that decision or any aspect of it. In this case, six different types of goods were imported under one customs invoice. The classification of the goods was deemed to have been made 30 days after the time the goods were accounted for pursuant to subsection 58(5). The appellant requested a re-determination pursuant to paragraph 63(1)(a) in respect of two of the goods in issue – the resistors and the capacitors. However, the respondent re-determined the tariff classification of all the goods.

In the Tribunal's view, the only question properly before it was whether the resistors and capacitors qualified for duty relief under Code 2101. It held that, as the respondent re-determined the classification of the resistors and capacitors as a result of the appellant's request for re-determination pursuant to paragraph 63(1)(a) of the *Customs Act*, a decision was made by the respondent pursuant to section 63. Therefore, the appeal on the classification of the resistors and capacitors was properly before the Tribunal. However, the Tribunal found that the respondent's re-determination of the classification of the four other types of goods was not a re-determination resulting from a request for re-determination by the appellant pursuant to section 63 nor was it a re-determination made pursuant to section 64. As there was no decision by the respondent on these four other types of goods, the Tribunal was not seized of the matter. The Tribunal also found that it could not declare the respondent's decision in respect of those four other goods a nullity. Its jurisdiction is set out in section 67 and, without a decision of the respondent made under section 63 or 64 in respect of those four goods, the Tribunal had no jurisdiction to make a pronouncement in relation to their classification. The *Customs Act* does not give the Tribunal the jurisdiction to judicially review a decision of the respondent. That is a matter for the Federal Court of Canada.

Once the jurisdictional issue decided, the Tribunal had to determine whether the resistors and capacitors qualified for duty relief under Code 2101. Code 2101 applies to articles for use in the goods in tariff item No. 9032.89.20, which covers process control apparatus, excluding sensors, which converts analog signals from or to digital signals. The Tribunal had to determine whether the resistors and capacitors were "for use in" a process control apparatus of tariff item No. 9032.89.20. The Tribunal examined the expression "for use in" found at section 4 of the *Customs Tariff* as it was at the time of importation of the goods in issue. The expression includes "attached to", and the Tribunal adopted that term as it was used in *Sony of Canada v. DMNR*, whereby goods are attached to other goods if they are "physically connected and are functionally joined" to the latter. Before deciding whether the goods in issue were physically connected and functionally joined to process control apparatus, the Tribunal examined what constituted process control apparatus of tariff item No. 9032.89.20. The Tribunal was of the view that "process control" included the functioning of devices that collectively monitor the system, interpret the data received and take action to restore the system to pre-set values. Therefore, devices that participate in control or management decisions engage in process control. In addition, devices that participate in certain protective decisions can also be engaging in process control. The Tribunal was of the view that the control of a single element of the process, or an aspect of a single element of the process, may constitute process control. The evidence before the Tribunal was that the functional unit, composed of the voltage and current transformers, control relays and circuit breakers, monitors the

transmission of electricity to ensure that the voltage and other variables are at appropriate settings. The evidence also showed that the control relays interpret the data received from the voltage and current transformers and send a signal to other equipment, such as circuit breakers or switchgear, to direct that equipment to take action to restore the system to pre-set values. The Tribunal found that the functional unit, composed of the voltage and current transformers, control relays and circuit breakers, participates in management and control decisions and is process control apparatus under tariff item No. 9032.89.20. The Tribunal was of the view that, although the resistors and capacitors were physically connected to the control relays and circuit breakers, they were not functionally joined to the process control apparatus and were passive devices. As they did not have an active role in carrying out directions from the process control apparatus, they were not functionally joined to the process control apparatus. Therefore, the resistors and capacitors did not qualify for duty relief under Code 2101 as goods for use in process control apparatus of tariff item No. 9032.89.20. The appeal was dismissed.

***Regal Confections v.
DMNR***

*AP-98-043, AP-98-044
and AP-98-051*

*Decision:
AP-98-043 and
AP-98-051, dismissed
AP-98-044, allowed
(June 25, 1999)*

These were three appeals regarding the tariff classification of the following products: candy-filled baby bottles labelled “Dino•Rocks” (Baby Bottles) in Appeal No. AP-98-043; blister cards containing a motorized candy dispenser and two packages of PEZ candy (Power PEZ) in Appeal No. AP-98-044; and clear plastic toy banks in the shape of a duck (Duck Banks) in Appeal No. AP-98-051. Appeal Nos. AP-98-043 and AP-98-044 raised the issue of whether the Baby Bottles and Power PEZ were properly classified under tariff item No. 1704.90.90 as other sugar confectionery not containing cocoa, as determined by the respondent, or should have been classified as other toys, reduced-size (“scale”) models and similar recreational models under tariff item No. 9503.90.00 for the Baby Bottles, and as other toys, other than of metal, incorporating a motor under tariff item No. 9503.80.90 for the Power PEZ, as claimed by the appellant. Appeal No. AP-98-051 raised the issue of whether the Duck Banks were properly classified under tariff item No. 3923.90.90 as other plastic containers, as determined by the respondent, or should have been classified under tariff item No. 9503.90.00 as other toys, as claimed by the appellant.

Regarding the Baby Bottles, unable to classify the goods according to Rule 1 of the *General Rules for the Interpretation of the Harmonized System* (the General Rules), the Tribunal moved to Rule 3 (b), as these goods consisted of more than one product. The Tribunal had to determine the essential character of the goods as either toys in heading No. 95.03 or candy in heading No. 17.04. On balance, the evidence that the Baby Bottles were, first and foremost, toys was not convincing, rather the bottles provided novelty packaging that contributed to the marketing of the candy. These goods were properly classified under tariff item No. 1704.90.90 as other sugar confectionery not containing cocoa.

With respect to the Power PEZ, these goods again could not be classified solely on the basis of Rule 1 of the General Rules. The Tribunal was directed to Rule 3 (b), given that the blister card contains the motorized candy dispenser, which could be classified as a toy, and the two packages of candy, which could be classified as confectionery. It was the Tribunal's opinion that, for purposes of classification, novelty packaging was not usually determinative; however, in the case of the Power PEZ, the novelty was so extensive that it actually transformed the essential character of the product. The play value of the Power PEZ predominates over the candy. It is designed for play prior to the candy being eaten and even prior to the package being opened. Furthermore, the play value is also durable, as evidenced by the fact that the Power PEZ dispenser has a replaceable battery and is a collectible. The Tribunal, therefore, agreed with the appellant, given the fact that the play value of the Power PEZ not only endures but also precedes any eating of the candy. As a result, the Power PEZ should be classified as other toys, other than of metal, incorporating a motor under tariff item No. 9503.80.90.

Regarding the Duck Banks, the Tribunal was of the view, based on Rule 1 of the General Rules, that these goods were properly classified under tariff item No. 3923.90.90. Although their many features made them appealing, the Duck Banks were plastic containers, not toys, at the time of importation. They were used by the appellant as containers to sell all kinds of candy. Their secondary use, as premium products for the retailer, was irrelevant for the purpose of tariff classification. What retailers did with the Duck Banks when they were empty, whether they put something else in them or sold them as toys, was merely circumstantial and had no bearing on the tariff classification of these goods. The appeals with respect to the Baby Bottles and the Duck Banks were dismissed. The appeal with respect to the Power Pez was allowed.

TABLE 1

Appeal Decisions Rendered Under Section 67 of the *Customs Act* and Section 81.19 of the *Excise Tax Act* Between April 1, 1999, and March 31, 2000

Appeal No.	Appellant	Date of Decision	Decision
<i>Customs Act</i>			
AP-95-128	Nowasco Well Service Ltd.	May 18, 1999	Dismissed
AP-97-069	Italfina Inc.	May 31, 1999	Dismissed
AP-98-061	Xerox Canada Ltd./The Document Company	June 10, 1999	Dismissed
AP-98-056	Thérèse Abranches	June 14, 1999	Dismissed
AP-98-043, AP-98-044 and AP-98-051	Regal Confections Inc.	June 25, 1999	AP-98-043 and AP-98-051, dismissed AP-98-044, allowed
AP-97-139 and AP-98-042	Bureau de relations d'affaires internationales inc. (Busrel inc.)	August 24, 1999	AP-97-139, allowed AP-98-042, dismissed
AP-98-076	International Imports for Competitive Shooting Equipment Inc.	August 26, 1999	Dismissed
AP-95-225 and AP-95-227	Diamant Boart Truco Ltd.	September 3, 1999	Dismissed
AP-92-298, AP-92-348, AP-92-380, AP-93-038, AP-93-121, AP-95-144 and AP-95-221	Mueller Canada Inc.	September 23, 1999	Dismissed
AP-98-085	Utex Corporation	October 27, 1999	Dismissed
AP-98-053 and AP-98-054	Reha Enterprises Ltd. and Cosmetic Import Co. Limited	October 28, 1999	Dismissed
AP-97-063, AP-97-067, AP-97-077, AP-97-079, AP-97-084, AP-97-085, AP-97-096, AP-97-103, AP-97-115 and AP-97-136	AYP (Canada) Inc.	November 5, 1999	Dismissed
AP-97-074	C.L. Blue Systems Ltd.	November 24, 1999	Dismissed
AP-98-100	Brunswick International (Canada) Limited	December 14, 1999	Allowed in part
AP-98-078	Classic Chef Corp.	December 17, 1999	Dismissed
AP-98-067	The Stevens Company Limited	December 20, 1999	Allowed
AP-97-123	Asea Brown Boveri Inc.	December 21, 1999	Allowed
AP-97-137	Asea Brown Boveri Inc.	December 21, 1999	Dismissed
AP-98-106	Atlas Graphic Supply Inc.	January 12, 2000	Dismissed
AP-98-108	Naturin Canada	January 14, 2000	Allowed
AP-98-058 and AP-98-02	Motovan Motosport Inc. and Steen Hansen Motorcycles Ltd.	January 21, 2000	Dismissed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-99-055	Multidick Incorporated	February 3, 2000	Dismissed
AP-94-101	Khong Island Jeweller Ltd.	February 11, 2000	Dismissed
AP-98-047	N.C. Cameron & Sons, Limited	February 11, 2000	Dismissed
AP-97-124 and AP-97-125	Asea Brown Boveri Inc.	February 21, 2000	Dismissed
AP-98-001	Asea Brown Boveri Inc.	February 21, 2000	Allowed
AP-99-037	Coloridé Inc.	February 25, 2000	Allowed
AP-99-015 to AP-99-025	Convoy Supply Ltd.	February 28, 2000	Allowed

Excise Tax Act

AP-95-139	Advance Building Products Ltd.	September 29, 1999	Dismissed
AP-92-222	Les Huiles Idéal Inc.	October 4, 1999	Dismissed
AP-92-238	Driscoll's Darts & Trophies Ltd.	January 27, 2000	Dismissed
AP-93-049	Raymonde Plourde	February 11, 2000	Dismissed

TABLE 2**Tribunal Decisions Appealed to the Federal Court of Canada Between April 1, 1999, and March 31, 2000, and Pending as of March 31, 2000¹**

Appeal No.	Appellant/Product	Federal Court No.
AP-97-063, AP-97-067, AP-97-077, AP-97-079, AP-97-084, AP-97-085, AP-97-096, AP-97-103, AP-97-115 and AP-97-136	AYP (Canada) Inc.	A—57—00
AP-97-137	Asea Brown Boveri Inc.	T—80—00 A—171—00 T—582—00
AP-98-007 and AP-98-010	Richards Packaging Inc. and Duopac Packaging Inc.	A—262—99
AP-98-055	Butteroil Blends	A—396—99
AP-98-061	Xerox Canada Ltd./The Document Company	A—535—99
AP-98-085	Utex Corporation	A—28—00

1. The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not participate in appeals to the Federal Court of Canada, it is unable to confirm that the list contains all Tribunal decisions appealed to the Federal Court of Canada between April 1, 1999, and March 31, 2000.

TABLE 3

Appeal Decisions of the Federal Court of Canada Rendered Between April 1, 1999, and March 31, 2000¹

Appeal No.	Appellant	Federal Court No.	Outcome	Date
AP-92-128	Park City Products Limited	T—77—94	Appeal dismissed	September 15, 1999
AP-92-335	Mercedes-Benz Canada Inc.	T—1365—94	Appeal discontinued	April 26, 1999
AP-93-333	Michelin Tires (Canada) Ltd.	T—1525—95	Appeal dismissed	March 28, 2000
AP-94-022	Ventes J.V.F. Inc.	T—1551—95	Appeal dismissed	July 6, 1999
AP-94-265	Super Générateur Inc.	T—1585—96	Appeal dismissed	August 10, 1999
AP-95-090 and AP-95-166	Toyota Canada Inc.	A—878—96	Appeals allowed	June 28, 1999
AP-95-128	Nowsco Well Service Ltd.	A—506—99	Appeal allowed in part	November 10, 1999
AP-95-258	Specialized Bicycle Components Canada, Inc.	A—45—97	Appeal dismissed	January 17, 2000
AP-95-259	Paccar of Canada Ltd.	A—354—98	Appeal dismissed	January 20, 2000
AP-96-082	Rollins Machinery Ltd.	A—3—98	Appeal allowed	September 15, 1999
AP-96-105	Armstrong Bros. Tool Co.	A—818—97	Appeal dismissed	June 22, 1999
AP-96-114	Tootsie Roll of Canada Limited	A—848—97	Appeal dismissed	June 22, 1999
AP-96-127	KanEng Industries Inc.	A—44—98	Appeal discontinued	April 6, 1999
AP-96-211, AP-96-212, AP-96-216, AP-96-223, AP-96-237 to AP-96-239, AP-97-001, AP-97-004 to AP-97-008 and AP-97-024 to AP-97-026	2703319 Canada Inc. O/A WWV Enterprises, 168700 Canada Inc. O/A Sacha London, Aldo Shoes (1993) Inc., Transit (A Division of Aldo Shoes) and Globo (A Division of Aldo Shoes)	A—155—98	Appeal dismissed	November 25, 1999
AP-96-241	C.A.S. Sports International Inc. and Atomic Ski Canada Inc.	A—108—98	Appeal discontinued	March 22, 1999
AP-97-036	Spalding Canada Inc.	A—123—98	Appeal dismissed	April 23, 1999
AP-97-078	Jonic International Incorporated	A—765—98	Appeal discontinued	July 30, 1999
AP-97-082	Cooper Industries (Canada) Inc.	A—702—98	Appeal discontinued	March 23, 1999
AP-97-104	Transilwrap of Canada Ltd.	A—337—99	Appeal discontinued	August 18, 1999
AP-98-006	Burlodge Canada Ltd.	A—200—99	Appeal discontinued	June 2, 1999

1. The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not participate in appeals to the Federal Court of Canada, it is unable to confirm that the list contains all appeals that were decided between April 1, 1999, and March 31, 2000.

CHAPTER V

ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES

Introduction

The CITT Act contains broad provisions under which the government or the Minister of Finance may ask the Tribunal to conduct an inquiry on any economic, trade, tariff or commercial matter. In an inquiry, the Tribunal acts in an advisory capacity, with powers to conduct research, receive submissions and representations, find facts, hold public hearings and report, with recommendations as required, to the government or the Minister of Finance.

Textile Reference

Pursuant to a reference from the Minister of Finance dated July 6, 1994, as amended on March 20 and July 24, 1996, on November 26, 1997, and on August 19, 1999, the Tribunal was directed to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister of Finance.

Scope of the Reference

A domestic producer may apply for tariff relief on an imported textile input used, or proposed to be used, in its manufacturing operations. The textile inputs on which tariff relief may be requested are the fibres, yarns and fabrics of Chapters 51, 52, 53, 54, 55, 56, 58, 59 and 60; certain monofilaments or strips and textile and plastic combinations of Chapter 39; rubber thread and textile and rubber combinations of Chapter 40; and products of textile glass fibres of Chapter 70 of the schedule to the *Customs Tariff*. Since July 24, 1996, and at least until July 1, 2002, the following yarns are not included in the textile reference:

Knitting yarns, solely of cotton or solely of cotton and polyester staple fibres, measuring more than 190 decitex, of Chapter 52 or subheading No. 5509.53 other than those used to make sweaters, having a horizontal self-starting finished edge and the outer surfaces of which are constructed essentially with 9 or fewer stitches per 2 centimetres (12 or fewer stitches per inch) measured in the horizontal direction.

Types of Relief Available

The tariff relief that may be recommended by the Tribunal to the Minister of Finance ranges from the removal or reduction of tariffs on one or several, partial or complete, tariff lines, textile- and/or end-use-specific tariff provisions. In the case of requests for tariff relief on textile inputs used in the manufacture of

women's swimsuits, co-ordinated beachwear and co-ordinated accessories only, the recommendation could include company-specific relief. The recommendation could be for tariff relief for either a specific or an indeterminate period of time. However, the Tribunal will only recommend tariff relief that is administrable on a cost-effective basis.

Process

Domestic producers seeking tariff relief must file a request with the Tribunal. Producers must file with the request either samples of the textile input for which tariff relief is being sought or a National Customs Ruling from the CCRA covering the input. If the Tribunal determines that the request is properly documented, it will conduct an investigation to determine if it should recommend tariff relief.

Filing and Notification of a Request

Upon receipt of a request for tariff relief, and before commencement of an investigation, the Tribunal issues a brief electronic notice on its Web site announcing the request. The minimum period of time for the notification of a request before an investigation is commenced is 30 days.

This notification is designed to increase transparency, identify potential deficiencies in the request, avoid unnecessary investigations, provide an opportunity for the domestic textile industry to contact the requester and agree on a reasonable domestic source of supply, inform other users of identical or substitutable textile inputs, prepare the domestic industry to respond to subsequent investigation questionnaires and give associations advance time for planning and consultation with their members.

Investigations

When the Tribunal is satisfied that a request is properly documented, it commences an investigation. A notice of commencement of investigation is sent to the requester, all known interested parties and any appropriate government department or agency, such as the Department of Foreign Affairs and International Trade, the Department of Industry, the Department of Finance and the CCRA. The notice is also published in the *Canada Gazette*.

In any investigation, interested parties include domestic producers, certain associations and other persons who are entitled to be heard by the Tribunal because their rights or pecuniary interests may be affected by the Tribunal's recommendations. Interested parties are given notice of the request and can participate in the investigation. Interested parties include competitors of the requester, suppliers of goods that are identical to or substitutable for the textile input and downstream users of goods produced from the textile input.

To prepare a staff investigation report, the Tribunal staff gathers information through such means as plant visits and questionnaires. Information is obtained from the requester and interested parties, such as a domestic supplier of the textile input, for the purpose of providing a basis for determining whether the tariff relief sought will maximize net economic gains for Canada.

In normal circumstances, a public hearing is not required, and the Tribunal will dispose of the matter on the basis of the full written record, including the request, the staff investigation report and all submissions and evidence filed with the Tribunal.

The procedures for the conduct of the Tribunal's investigation envisage the full participation of the requester and all interested parties. A party, other than the requester, may file submissions, including evidence, in response to the properly documented request, the staff investigation report and any information provided by a government department or agency. The requester may subsequently file submissions with the Tribunal in response to the staff investigation report and any information provided by a government department or agency or other party.

Where confidential information is provided to the Tribunal, such information falls within the protection of the CITT Act. Only independent counsel who have filed declarations and confidentiality undertakings may have access to such confidential information.

**Recommendations
to the Minister**

The Tribunal will normally issue its recommendations, with reasons, to the Minister of Finance within 120 days from the date of commencement of the investigation. In exceptional cases, where the Tribunal determines that critical circumstances exist, the Tribunal will issue its recommendations within an earlier specified time frame which the Tribunal determines to be appropriate. The Tribunal will recommend the reduction or removal of customs duties on a textile input where it will maximize net economic gains for Canada.

Request for Review

Where the Minister of Finance has made an order for tariff relief pursuant to a recommendation of the Tribunal, certain domestic producers may make a request to the Tribunal to commence an investigation for the purpose of recommending the renewal, amendment or termination of the order. A request for the amendment or termination of the order should specify what changed circumstances justify such a request.

Review on Expiry

Where the Minister of Finance has made an order for tariff relief subject to a scheduled expiry date, the Tribunal will, before the expiry date, issue a formal

notice that the tariff relief provided by the order will expire unless the Tribunal issues a recommendation that tariff relief should be continued and the Minister of Finance implements the recommendation. The notice invites interested parties to file submissions for or against continuation of tariff relief.

If no opposition to the continuation of tariff relief is received, upon receipt of submissions and information supporting the request for continuation of tariff relief, the Tribunal may decide to recommend the continuation of tariff relief. Conversely, if no request for continuation of tariff relief is submitted, the Tribunal may decide to recommend the termination of tariff relief. If it appears that a more complete review is warranted, the Tribunal will conduct an investigation to consider whether all relevant factors which led it to recommend tariff relief continue to apply and whether extending tariff relief under such conditions would continue to provide net economic benefits for Canada.

Annual Status Report

In accordance with the terms of reference received by the Tribunal directing it to conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their manufacturing operations, the Tribunal provided the Minister of Finance, on January 27, 2000, with its fifth annual status report on the investigation process. The status report covered the period from October 1, 1998, to September 30, 1999.

Recommendations Submitted During the Fiscal Year

During the fiscal year, the Tribunal issued 6 reports to the Minister of Finance which related to 8 requests for tariff relief. In addition, the Tribunal issued one report further to a review of recommendations that were previously issued. At year end, 5 requests were outstanding, of which investigations had been commenced in respect of 4 requests. Table 1 at the end of this chapter summarizes these activities.

Recommendations in Place

By the end of the fiscal year, the Government had implemented 73 recommendations by the Tribunal, of which 66 are still subject to tariff relief orders. Table 3 provides a summary of recommendations currently implemented.

The implementation of Tribunal recommendations is made by adding new tariff items to the *Customs Tariff*. During the fiscal year, these tariff items covered imports worth \$160 million (estimated) and provided tariff relief worth \$21 million (estimated), the latter representing a decrease of 16 percent over 1998-99.

A summary of a representative sample of Tribunal recommendations issued during the fiscal year follows.

Certain Ring-spun Yarns

TA-98-004

*Recommendation:
Tariff relief to be
continued for an
additional period of
three years
(June 18, 1999)*

The Tribunal recommended to the Minister of Finance that tariff relief on importations of certain ring-spun yarns be continued beyond June 30, 1999, for an additional period of three years. In its report, the Tribunal noted that there was a broad consensus in the textile spinning and knitting industries that, as a minimum, the tariff relief for certain ring-spun yarns should be continued for an additional period of three years. The Tribunal indicated that tariff relief had provided domestic users of these yarns with benefits that were worth millions of dollars each year. The Tribunal also noted that it did not receive any evidence that could allow it to conclude that the factors that led it to recommend that tariff relief be granted had significantly changed since it issued its original recommendations in 1995 and 1996. The Tribunal concluded that, in the absence of such evidence, extending tariff relief should continue to provide net economic gains for Canada.

Tribal Sportswear Inc.

TR-98-019

*Recommendation:
Indeterminate tariff relief
(August 24, 1999)*

The Tribunal recommended to the Minister of Finance that tariff relief on importations of woven fabrics of cotton, 3-thread twill, containing 98 percent by weight of cotton and 2 percent by weight of elastomeric strip, dyed, weighing more than 200 g/m², of subheading No. 5209.32, for use in the manufacture of women's pants, skirts and shorts, be granted for an indeterminate period of time. In its report, the Tribunal noted that it did not view the cotton and cotton/polyester fabrics produced by the domestic industry as being substitutable for the fabrics for which tariff relief was requested. With regard to the domestic cotton/spandex fabric that was being developed, the Tribunal noted that market acceptance and the industry's ability to supply had not, at that time, been demonstrated. Accordingly, the Tribunal could not attribute any costs that might be incurred by the domestic industry to the assessment of the net economic gains for Canada from the requested tariff relief. The Tribunal concluded that tariff relief would provide a yearly benefit to Tribal Sportswear Inc. and other users of the subject fabrics estimated at more than \$200,000.

Ballin Inc.

TR-97-012

*Recommendation:
Indeterminate tariff relief
(October 27, 1999)*

The Tribunal recommended to the Minister of Finance that tariff relief on importations of: (1) woven fabrics, of yarns of different colours, of polyester filaments mixed solely with polynosic rayon staple fibres, the 2-ply warp yarns and the single weft yarns measuring not less than 190 decitex but not more than 250 decitex per single yarn, the staple fibres measuring not more than 2.4 decitex per single staple fibre, of a weight exceeding 170 g/m², of subheading No. 5407.93; and (2) woven fabrics, of yarns of different colours, of polynosic rayon staples fibres, mixed mainly with polyester filaments or polyester staple

fibres, measuring not less than 85 decitex but not more than 250 decitex per single yarn, the staple fibres measuring not more than 3.4 decitex per single staple fibre, weighing at least 120 g/m² but not more than 210 g/m², of subheading No. 5516.23, both for use in the manufacture of men's trousers and shorts, be granted for an indeterminate period of time.

The Tribunal was of the view that the polyester/rayon fabrics and the fabrics made from Tencel or Tencel blends produced by the domestic industry were not substitutable for the fabrics for which tariff relief was requested. With regard to the Micro-Diamond fabric that was under development, the Tribunal did not attribute any costs that might be incurred by the domestic industry to the assessment of the net economic gains for Canada from the requested tariff relief because the said fabric was not directly substitutable. The Tribunal concluded that, considering that tariff relief would provide yearly benefits to Ballin Inc. and other users of the subject fabrics in excess of \$500,000, granting the tariff relief requested would result in net economic benefits for Canada.

TABLE 1

Disposition of Requests for Tariff Relief Between April 1, 1999, and March 31, 2000

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-97-012	Ballin Inc.	Fabric	October 27, 1999	Indeterminate tariff relief
TR-98-004,	Ladcal Investments Ltd.,	Fabric	April 14, 1999	Indeterminate tariff relief
TR-98-005 and TR-98-006	O/A Pintar Manufacturing, Nour Trading House Inc. and T.S. Simms and Company Limited			
TR-98-008	Zenobia Collection Inc.	Fabric	August 31, 1999	File closed
TR-98-009	Zenobia Collection Inc.	Fabric	August 31, 1999	File closed
TR-98-010	Zenobia Collection Inc.	Fabric	August 31, 1999	File closed
TR-98-011	Zenobia Collection Inc.	Fabric	August 31, 1999	File closed
TR-98-012	Zenobia Collection Inc.	Fabric	August 31, 1999	File closed
TR-98-013	Zenobia Collection Inc.	Fabric	August 31, 1999	File closed
TR-98-014	Zenobia Collection Inc.	Fabric	August 31, 1999	File closed
TR-98-015	Zenobia Collection Inc.	Fabric	August 31, 1999	File closed
TR-98-017	Jones Apparel Group Canada Inc.	Fabric	July 8, 1999	Indeterminate tariff relief
TR-98-018	Utex Corporation	Fabric	July 30, 1999	File closed
TR-98-019	Tribal Sportswear Inc.	Fabric	August 24, 1999	Indeterminate tariff relief
TR-99-001	Alpine Joe Sportswear Ltd.	Fabric	January 13, 2000	File closed
TR-99-002	Albany International Canada Inc.	Yarn	December 8, 1999	Indeterminate tariff relief
TR-99-003	Western Glove Works Ltd.	Fabric	February 4, 2000	Indeterminate tariff relief
TR-99-004	Peerless Clothing Inc.	Fabric	In progress	
TR-99-005	Distex Inc.	Fabric	In progress	
TR-99-006	Coloridé Inc.	Yarn	In progress	
TR-99-007	Soltex Textiles Canada Inc.	Nonwoven	Not yet initiated	
TR-99-008	JMJ Fashions Inc.	Fabric	In progress	

TABLE 2

Disposition of Reviews of Tariff Relief Recommendations Between April 1, 1999, and March 31, 2000

Review No.	Expiry No. (Original Request No.)	Textile Input	Date of Disposition	Status/Recommendations
TA-98-004	TE-98-002 (TR-94-002 and TR-94-002A)	Yarn	June 18, 1999	Continuation of tariff relief for three years

TABLE 3

Tariff Relief Recommendations in Place

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-94-001		Canatex Industries (Division of Richelieu Knitting Inc.)	5402.41.12	Indeterminate tariff relief
TR-94-004		Woods Canada Limited	5208.52.10	Indeterminate tariff relief
TR-94-010		Palliser Furniture Ltd.	5806.20.10	Indeterminate tariff relief
TR-94-012		Peerless Clothing Inc.	5309.29.20	Indeterminate tariff relief
TR-94-013 and TR-94-016		MWG Apparel Corp.	5208.42.20 5208.43.20 5208.49.20 5513.31.10 5513.32.10 5513.33.10	Indeterminate tariff relief
TR-94-017 and TR-94-018		Elite Counter & Supplies	9943.00.00	Indeterminate tariff relief
TR-95-003		Landes Canada Inc.	5603.11.20 5603.12.20 5603.13.20 5603.14.20 5603.91.20 5603.92.20 5603.93.20 5603.94.20	Indeterminate tariff relief
TR-95-004		Lingerie Bright Sleepwear (1991) Inc.	5208.12.20 5208.52.20	Indeterminate tariff relief
TR-95-005		Lingerie Bright Sleepwear (1991) Inc.	5513.11.10 5513.41.10	Indeterminate tariff relief
TR-95-009		Peerless Clothing Inc.	5408.21.10 5408.21.20 5408.22.21 5408.22.30	Indeterminate tariff relief
TR-95-010 and TR-95-034		Freed & Freed International Ltd. and Fen-nelli Fashions Inc.	5111.19.10 5111.19.20	Indeterminate tariff relief
TR-95-011		Louben Sportswear Inc.	5408.31.10 5408.32.20	Indeterminate tariff relief
TR-95-012		Perfect Dyeing Canada Inc.	5509.32.10	Indeterminate tariff relief

Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-95-013A		Doubletex	5208.11.30 5208.12.40 5208.13.20 5208.19.30 5208.21.40 5208.22.20 5208.23.10 5208.29.20 5209.11.30 5209.12.20 5209.19.30 5209.21.20 5209.22.10 5209.29.20	Indeterminate tariff relief
TR-95-036		Canadian Mill Supply Co. Ltd.	5208.21.20	Indeterminate tariff relief
TR-95-037		Paris Star Knitting Mills Inc.	5408.24.11 5408.24.91 5408.34.10 5516.14.10 5516.24.10	Indeterminate tariff relief
TR-95-051		Camp Mate Limited	5407.41.10 5407.42.10 5407.42.20 5903.20.22	Indeterminate tariff relief
TR-95-053 and TR-95-059		Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	5802.11.10 5802.19.10 5802.19.20	Indeterminate tariff relief
TR-95-056		Sealy Canada Ltd.	3921.19.10 5407.69.10 5407.73.10 5407.94.10 5516.23.10 5903.90.21 6002.43.20	Indeterminate tariff relief
TR-95-057 and TR-95-058		Doubletex	5407.51.10 5407.61.92 5407.69.10 5515.11.10 5516.21.10 5516.91.10	Indeterminate tariff relief
TR-95-060		Triple M Fiberglass Mfg. Ltd.	7019.59.10	Indeterminate tariff relief
TR-95-061		Camp Mate Limited	6002.43.30	Indeterminate tariff relief
TR-95-064 and TR-95-065		Lady Americana Sleep Products Inc. and el ran Furniture Ltd.	6002.43.10	Indeterminate tariff relief

Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-96-003		Venture III Industries Inc.	5407.61.92	Indeterminate tariff relief
TR-96-004		Acton International Inc.	5906.99.21	Indeterminate tariff relief
TR-96-006		Alpine Joe Sportswear Ltd.	P.C. 1998-1118	Six-year tariff relief
TR-96-008 and TR-96-010 to TR-96-013		Les Collections Shan Inc.	P.C. 1997-1668	Five-year tariff relief
TR-97-001		Jones Apparel Group Canada Inc.	5407.91.10 5407.92.20 5407.93.10 5408.21.30 5408.22.40 5408.23.20 5408.31.30 5408.32.40 5408.33.10	Indeterminate tariff relief
TR-97-002 and TR-97-003		Universal Manufacturing Inc.	5208.43.30 5513.41.20	Indeterminate tariff relief
TR-97-006		Peerless Clothing Inc.	5407.51.30 5903.90.22 5903.90.23 5903.90.24 6002.43.40 6002.43.50	Indeterminate tariff relief
TR-97-004, TR-97-007, TR-97-008 and TR-97-010		Blue Bird Dress of Toronto Ltd.	5407.51.20 5407.52.20 5407.61.94 5407.69.20	Indeterminate tariff relief
TR-97-011		Australian Outback Collection (Canada) Ltd.	5209.31.20 5907.00.16	Indeterminate tariff relief
TR-97-012		Ballin Inc.	5407.93.30 5516.23.20	Indeterminate tariff relief
TR-97-014		Lenrod Industries Ltd.	5603.93.40	Indeterminate tariff relief
TR-97-015, TR-97-016 and TR-97-020		Helly Hansen Canada Ltd.	5903.20.24	Indeterminate tariff relief
TR-98-001		Cambridge Industries	5608.19.20	Indeterminate tariff relief
TR-98-002		Distex Inc.	6002.92.20	Indeterminate tariff relief
TR-98-004,		Ladcal Investments Ltd., O/A Pintar Manufacturing	5806.10.20	Indeterminate tariff relief
TR-98-005 and TR-98-006		Nour Trading House and T.S. Simms and Company Limited		

Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-98-007		Caulfeild Apparel Group Ltd.	5208.43.30	Indeterminate tariff relief
TR-98-016		Peerless Clothing Inc.	5407.93.20	Indeterminate tariff relief
TR-98-017		Jones Apparel Group Canada Inc.	5408.32.50 5408.33.20 5408.34.20	Indeterminate tariff relief
TR-98-019		Tribal Sportswear Inc.	5209.12.30 5209.22.20 5209.32.10	Indeterminate tariff relief
TR-99-002		Albany International Canada Inc.	5405.10.20	Indeterminate tariff relief
TA-98-001	TE-97-004 (TR-95-009)	Certain dyed woven fabrics of rayon and polyester	5408.31.20 5408.32.30	Indeterminate tariff relief
TA-98-002	TE-97-003 (TR-94-009)	Vinex FR-9B fabric	5512.99.10	Indeterminate tariff relief
TA-98-003	TE-98-001 (TR-95-014)	Woven cut warp pile fabrics	5801.35.10	Indeterminate tariff relief
TA-98-004	TE-98-002 (TR-94-002 and TR-94-002A)	Certain ring-spun yarns	5205.14.20 5205.15.20 5205.24.20 5205.26.20 5205.27.20 5205.28.20 5205.35.20 5205.46.20 5205.47.20 5205.48.20 5206.14.10 5206.15.10 5206.24.10 5206.25.10 5509.53.10 5509.53.20 5509.53.30 5509.53.40	Three-year tariff relief

CHAPTER VI

PROCUREMENT REVIEW

Introduction

Suppliers may challenge federal government procurement decisions that they believe have not been made in accordance with the requirements of the following: Chapter Ten of NAFTA, Chapter Five of the AIT or the AGP. The bid challenge portions of these agreements came into force on January 1, 1994, July 1, 1995, and January 1, 1996, respectively.

Any potential suppliers who believe that they may have been unfairly treated during the solicitation or evaluation of bids, or in the awarding of contracts on a designated procurement, may lodge a formal complaint with the Tribunal. A potential supplier with an objection is encouraged to resolve the issue first with the government institution responsible for the procurement. When this process is not successful or a supplier wants to deal directly with the Tribunal, the complainant may ask the Tribunal to consider the case by filing a complaint within the prescribed time limit.

When the Tribunal receives a complaint, it reviews the submission against the criteria for filing. If there are deficiencies, the complainant is given an opportunity to correct these within a specified time limit. If the Tribunal decides to conduct an inquiry, the government institution and all other interested parties are sent a formal notification of the complaint. An official notice of the complaint is also published in *Government Business Opportunities* and the *Canada Gazette*. If the contract in question has not been awarded, the Tribunal may order the government institution to postpone awarding any contract pending the disposition of the complaint by the Tribunal, unless the government institution certifies that the procurement is urgent or that the delay would be against the public interest.

After receipt of its copy of the complaint, the government institution responsible for the procurement files a Government Institution Report (GIR) responding to the allegations. The complainant is then sent a copy of the GIR and has seven days to submit comments. These are forwarded to the government institution and any interveners.

A staff investigation, which can include interviewing individuals and examining files and documents, may be conducted and result in the production of a Staff Investigation Report. This report is circulated to the parties for their comments. Once this phase of the inquiry is completed, the Tribunal reviews the information collected and decides whether a hearing should be held.

The Tribunal then makes a determination, which may consist of recommendations to the government institution (such as re-tendering, re-evaluating or providing compensation) and the award of reasonable costs to a prevailing complainant for filing and proceeding with the bid challenge and/or costs for preparing the bid. The government institution, as well as all other parties and interested persons, is notified of the Tribunal's decision. Recommendations made by the Tribunal in its determination are to be implemented to the greatest extent possible.

Summary of Procurement Review Activities

	1998-99	1999-2000
CASES RESOLVED BY OR BETWEEN PARTIES		
Resolved Between Parties	-	-
Withdrawn	6	4
Abandoned While Filing	4	-
Subtotal	10	4
INQUIRIES NOT INITIATED OR CONTINUED ON PROCEDURAL GROUNDS		
Lack of Jurisdiction	6	6
Late Filing	7	9
No Valid Basis	4	13
Subtotal	17	28
CASES DETERMINED ON MERIT		
Complaint not Valid	14	13
Complaint Valid	10	14
Subtotal	24	27*
IN PROGRESS	15	9
TOTAL	66	68

* The Tribunal actually issued 26 written determinations which related to 27 procurement complaints.

Summary of Selected Determinations

During the fiscal year, the Tribunal issued 26 written determinations of its findings and recommendations which related to 27 procurement complaints. In 14 of the 26 written determinations, the complaints were determined to be valid or valid in part. In these cases, various remedies were granted in the form of cost awards or recommendations. Nine other cases were in progress at year end. Table 1 at the end of this chapter summarizes these activities.

***Polaris Inflatable
Boats (Canada) Ltd.***

PR-98-032

*Determination:
Complaint valid
(March 8, 1999)*

Of the cases heard by the Tribunal in carrying out its procurement review functions, certain decisions stand out from among the others because of the legal significance of the cases. Brief summaries of a representative sample of such cases have been prepared for general information purposes only and have no legal status.

The Tribunal made a determination with respect to a complaint filed by Polaris Inflatable Boats (Canada) Ltd. (Polaris) concerning a solicitation of the Department of Public Works and Government Services (the Department). The solicitation was to establish a National Master Standing Offer for the purchase of a range of rigid hull inflatable boats for various government departments and agencies.

Polaris alleged that, contrary to the provisions of NAFTA and the AIT, certain government departments were applying unspecified and unannounced criteria in deciding which manufacturer's product to purchase from a National Master Standing Offer. This action had the effect of unfairly favouring its dominant competitor.

Having examined the evidence and arguments presented by the parties and considered the subject matter of the complaint, the Tribunal determined that the complaint was valid. The Tribunal recommended that the Department reopen the solicitation to competition. The Department was to ensure that the solicitation documents clearly and fully disclosed all the requirements of the procurement and clearly set out the criteria that would be used in the evaluation of bids, as well as the method of weighting and evaluating the criteria.

***Keystone Supplies
Company***

*PR-98-034 and
PR-98-035*

*Determination:
Complaints not valid
(April 19, 1999)*

The Tribunal made a determination with respect to complaints filed by Keystone Supply Company (Keystone) concerning two solicitations of the Department for the procurement of shackles, swivels and chain for the Canadian Coast Guard of the Department of Fisheries and Oceans.

Keystone alleged that the procurement process unfairly discriminated against offshore suppliers by requiring testing at a single Canadian port of entry.

After careful consideration, the Tribunal determined that NAFTA, the AGP and the AIT did not apply to the goods (from a non-Party to the agreements) proposed to be supplied by Keystone and that, as such, the procurement of these goods could not be found to have been conducted contrary to the requirements set out in the trade agreements. Therefore, the Tribunal determined that the complaints were not valid.

**Mason-Shaw-Andrew
Management
Consultants**

PR-99-026

*Determination:
Complaint valid
(December 17, 1999)*

The Tribunal made a determination with respect to a complaint filed by Mason-Shaw-Andrew Management Consultants (MSA) concerning a solicitation of the Department on behalf of the Department of Health. The solicitation was for a study on the business impact analysis of proposed new tobacco reporting and labelling requirements for the Department of Health.

MSA alleged that, contrary to the provisions of NAFTA, the Department failed to use open tendering procedures and, thus, deprived MSA of equal access to all available information.

Having examined the evidence and arguments presented by the parties and considered the subject matter of the complaint, the Tribunal determined, first, that the procurement was for a service covered by NAFTA and of an amount that exceeded the minimum required threshold. The Tribunal then determined that the complaint was valid. The Tribunal recommended that the Department compensate MSA in the amount of one half of the profit that MSA would have made had it been awarded the contracts relating to this procurement.

**TrizecHahn Office
Properties Ltd.**

PR-99-047

*Inquiry not initiated/
Procurement process
not initiated
(February 17, 2000)*

The Tribunal made a decision with respect to a complaint filed by TrizecHahn Office Properties Ltd. (TrizecHahn) concerning an alleged solicitation of the Department for property management services for Canada Place in Edmonton, Alberta.

TrizecHahn alleged that the Department had announced that it would compete the requirement for property management services for Canada Place, whereby it was obligated to procure the services on a sole-source basis from TrizecHahn.

Having examined the evidence contained in the complaint, the Tribunal decided not to initiate an inquiry into this complaint because it related to a procurement that had not yet been initiated, as might have been evidenced by the publication of a Notice of Proposed Procurement.

**Judicial Review of
Procurement
Decisions**

The Federal Court of Canada dismissed an application by the Attorney General of Canada to review a decision of the Tribunal in File Nos. PR-98-012 and PR-98-014 (Corel Corporation) that found the complaints valid.

The Federal Court of Canada dismissed an application by MIL Systems (a Division of Davie Industries Inc.) and Fleetway Inc. to review a decision of the Tribunal in File No. PR-99-034 not to issue a postponement of award order.

The Federal Court of Canada dismissed an application by Jastram Technologies Inc. to review a decision of the Tribunal in File No. PR-98-008 not to accept a complaint for inquiry due to late filing.

Table 2 lists the procurement decisions that were appealed to or decided by the Federal Court of Canada during the fiscal year.

TABLE 1**Disposition of Procurement Complaints Between April 1, 1999, and March 31, 2000**

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-98-034 and PR-98-035	Keystone Supplies Company	December 1, 1998	Decision issued April 19, 1999 Complaints not valid
PR-98-037	ITS Electronics Inc.	January 4, 1999	Decision issued April 8, 1999 Complaint not valid
PR-98-038	MIL Systems	January 5, 1999	Decision issued April 14, 1999 Complaint valid
PR-98-039	Wescam Inc.	January 19, 1999	Decision issued April 19, 1999 Complaint valid
PR-98-040	Cougar Aviation Limited	January 22, 1999	Decision issued June 7, 1999 Complaint not valid
PR-98-042	Discover Training Inc.	February 1, 1999	Decision issued May 17, 1999 Complaint valid in part
PR-98-045	Ruiter Construction Ltd.	February 5, 1999	Decision issued April 30, 1999 Complaint not valid
PR-98-046	Deloitte & Touche Consulting Group	February 8, 1999	Decision issued May 4, 1999 Complaint not valid
PR-98-047	Novell Canada, Ltd.	February 11, 1999	Decision issued June 17, 1999 Complaint valid
PR-98-050	Douglas Barlett Associates Inc.	March 1, 1999	Decision issued June 7, 1999 Complaint valid
PR-98-051	National Airmotive Corporation	March 10, 1999	Decision issued June 3, 1999 Complaint dismissed/No jurisdiction
PR-98-052	Marathon Management Company	March 11, 1999	Decision issued May 26, 1999 Complaint valid
PR-98-054	Mediascan	March 22, 1999	Not accepted for inquiry/Late filing
PR-98-055	Mxl Technologies Ltd.	March 31, 1999	Complaint withdrawn
PR-99-001	Novell Canada, Ltd.	April 8, 1999	Decision issued July 7, 1999 Complaint valid
PR-99-002	Northern Micro Inc.	April 12, 1999	Decision issued July 12, 1999 Complaint not valid
PR-99-003	Pricewaterhousecoopers	April 12, 1999	Not accepted for inquiry/Late filing
PR-99-004	Detox Environmental Inc.	April 14, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-99-005	Mediascan	March 22, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-99-006	Quality Service International Inc.	April 19, 1999	Decision issued June 28, 1999 Complaint not valid
PR-99-007	IT/NET	April 21, 1999	Decision issued July 20, 1999 Complaint valid

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-99-008	OM Video	April 26, 1999	Not accepted for inquiry/Late filing
PR-99-009	Offshore Systems Ltd.	May 11, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-99-010	Navair Inc.	May 13, 1999	Not accepted for inquiry/Late filing
PR-99-011	IBM Canada Ltd./Lotus Development Canada Ltd.	May 21, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-99-012	APG Solutions & Technologies Inc.	May 26, 1999	Not accepted for inquiry/Late filing
PR-99-013	Akela Multimedia Productions Ltd.	May 27, 1999	Complaint withdrawn
PR-99-014	Collectcorp. Inc., the Collection House, Allied International Audit Corp.	June 4, 1999	Not accepted for inquiry/No jurisdiction
PR-99-015	BMCI Consultants Inc.	June 23, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-99-016	Metro Excavation Inc. and Enterprise Marissa Inc.	July 7, 1999	Decision issued November 5, 1999— Complaint not valid
PR-99-017	Liflow Limited	July 7, 1999	Decision issued October 13, 1999— Complaint not valid
PR-99-018	Am-Tech Power Systems Ltd.	July 12, 1999	Decision issued September 29, 1999— Complaint not valid
PR-99-019	Colebrand Limited	July 13, 1999	Not accepted for inquiry/Not a designated contract
PR-99-020	IBM Canada	July 14, 1999	Decision issued November 5, 1999— Complaint valid
PR-99-021	BMCI Consulting Inc.	July 28, 1999	Decision issued October 20, 1999— Complaint not valid
PR-99-022	KB Electronics Limited	August 10, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-99-023	Novell Canada, Ltd.	August 11, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-99-024	Alcatel Canada Inc.	August 30, 1999	Decision issued December 7, 1999— Complaint valid
PR-99-025	Alcatel Canada Inc.	August 30, 1999	Decision issued November 16, 1999— Complaint valid
PR-99-026	Mason-Shaw-Andrew Management Consultants	September 18, 1999	Decision issued December 17, 1999— Complaint valid
PR-99-027	Navatar	September 21, 1999	Not accepted for inquiry/Late filing
PR-99-028	TNT Digitizing & Embroidery	September 21, 1999	Not accepted for inquiry/Late filing
PR-99-029	Interfax Systems Inc.	September 21, 1999	Not accepted for inquiry/No reasonable indication of a breach

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-99-030	Novell Canada, Ltd.	October 1, 1999	Not accepted for inquiry/Not a designated contract
PR-99-031	Material Resource Recovery Inc.	October 8, 1999	Not accepted for inquiry/Late filing
PR-99-032	Quatratech Services Inc.	October 12, 1999	Decision issued January 26, 2000— Complaint not valid
PR-99-033	Pall Aeropower Corporation	October 18, 1999	Complaint withdrawn
PR-99-034	MIL Systems (a Division of Davie Industries Inc.) and Fleetway Inc.	October 21, 1999	Decision issued March 6, 2000— Complaint valid
PR-99-035	Dr. John C. Luik	November 9, 1999	Decision issued March 28, 2000— Complaint valid
PR-99-036	Unisource Techonology	December 8, 1999	Accepted for inquiry
PR-99-037	Educom Training Systems Inc.	December 16, 1999	Accepted for inquiry
PR-99-038	Checker Movers 1994	December 16, 1999	Not accepted for inquiry/Not a designated contract
PR-99-039	ISO Matrix.com	December 17, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-99-040	Brent Moore & Associates	December 20, 1999	Accepted for inquiry
PR-99-041	Ruiter Construction Ltd.	December 23, 1999	Complaint withdrawn
PR-99-042	Canada Live News Agency Inc.	January 4, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-99-043	Navatar	January 7, 2000	Accepted for inquiry
PR-99-044	Navatar	January 10, 2000	Accepted for inquiry
PR-99-045	Magellan Jacques Whitford	January 27, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-99-046	Asia Communications Québec Inc. (AsiaCom)	February 8, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-99-047	TrizecHahn Offices Ltd.	February 10, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-99-048	Tecmotiv Corporation	February 24, 2000	Not accepted for inquiry/Late filing
PR-99-049	Telus Communications	February 25, 2000	Accepted for inquiry
PR-99-050	StorageTek Canada Inc.	February 28, 2000	Accepted for inquiry
PR-99-051	ACE/ClearDefense Inc.	March 8, 2000	Accepted for inquiry
PR-99-052	Landsdowne Technologies Inc.	March 10, 2000	Not accepted for inquiry/Not a designated contract
PR-99-053	Rolls-Royce Industries Canada Inc.	March 22, 2000	Accepted for inquiry

TABLE 2

Procurement Cases Before the Federal Court of Canada Between April 1, 1999, and March 31, 2000

File No.	Complainant	Appellant	File No./ Status
PR-98-008	Jastram Technologies Inc.	Jastram Technologies Inc.	A—406—98 Appeal dismissed
PR-98-012 and PR-98-014	Corel Corporation	Attorney General of Canada	A—695—98 and A—696—98 Appeals dismissed
PR-98-043	NFC Canada Limited	NFC Canada Limited	T—515—99 Appeal discontinued
PR-98-040	Cougar Aviation Limited	Cougar Aviation Limited	A—421—99
PR-98-047	Novell Canada, Ltd.	Novell Canada, Ltd. Attorney General of Canada and Microsoft Corporation	A—440—99 A—447—99/A—448—99 Appeals discontinued
PR-99-001	Novell Canada, Ltd.	Novell Canada, Ltd.	T—1415—99 Appeal discontinued A—481—99
PR-99-023	Novell Canada, Ltd.	Novell Canada, Ltd.	A—565—99 Appeal discontinued
PR-99-030	Novell Canada, Ltd.	Novell Canada, Ltd.	A—759—99
PR-99-034	MIL Systems (a Division of Davie Industries Inc.) and Fleetway Inc.	MIL Systems (a Division of Davie Industries Inc.) and Fleetway Inc.	A—710—99 Appeal dismissed

Amendments to SIMA

Preliminary Injury Inquiry

CHAPTER VII

SIMA AMENDMENTS: INQUIRIES AND REVIEWS

Under the amendments to SIMA, the Tribunal will make the preliminary injury determination currently made by the Commissioner of the CCRA. The amendments also change the way in which the public interest is dealt with after a finding of injury. Finally, the amendments create distinct interim and expiry reviews. In an expiry review, the Commissioner will make the determination of whether there is a likelihood of continued or resumed dumping or subsidizing, a determination now made by the Tribunal under the current SIMA. The Tribunal will continue to make the determination of whether the continued or resumed dumping or subsidizing is likely to cause injury.

This chapter describes how the Tribunal will conduct each of the four proceedings. The Tribunal has established new or modified guidelines for these proceedings. The interim guidelines will contain more details on how parties may participate in the proceedings.

Subsection 34(2) of SIMA requires the Tribunal to initiate a preliminary injury inquiry at the same time as the Commissioner initiates a dumping or subsidizing investigation. The Tribunal will publish a notice in the *Canada Gazette* and send a copy of that notice to the Commissioner and all known interested persons

In the inquiry, the Tribunal will determine whether the evidence discloses a “reasonable indication” that the dumping or subsidizing has caused injury or retardation, or is threatening to cause injury. The primary evidence will be the information received from the Commissioner and submissions from parties. The Tribunal will seek the views of parties on what are the like goods and which domestic producers comprise the domestic industry. In most cases, the Tribunal will not issue questionnaires or hold a public hearing. The Tribunal will make a preliminary determination after an inquiry of up to 60 days.

Approximately 22 days following the commencement of the inquiry, the Tribunal will distribute the public information received from the Commissioner to all parties that filed notices of participation and the confidential information to counsel who filed declarations and confidentiality undertakings. This information will include the Commissioner’s reasons for initiation, the public and confidential versions of the domestic producer’s complaint and any other information that the Commissioner took into consideration when deciding to initiate an investigation.

Parties opposed to the complaint (importers, exporters and others) will be invited to file submissions with evidence approximately 32 days after the commencement of the inquiry. The complainant and other parties supporting the complaint will have 7 days to make rebuttal submissions.

If the Tribunal finds that there is a reasonable indication that the dumping or subsidizing has caused injury or retardation, or is threatening to cause injury, it will make a determination to that effect, and the Commissioner will continue the dumping or subsidizing investigation. If the Commissioner subsequently makes a preliminary determination of dumping or subsidizing, the Tribunal will commence a final injury inquiry under section 42 of SIMA. If there is no reasonable indication that the dumping or subsidizing has caused injury or retardation, or is threatening to cause injury, the Tribunal will terminate the inquiry and the Commissioner will terminate the dumping or subsidizing investigation. The Tribunal will issue reasons 15 days after its decision to terminate the inquiry.

Public Interest Inquiry

Subsection 45(1) of SIMA creates two distinct phases in the consideration of the public interest. Subsection 45(5) clarifies the options for reducing anti-dumping or countervailing duties if the Tribunal makes a report to the Minister of Finance recommending that a reduction in duties would be in the public interest. A new regulation identifies the factors that the Tribunal may take into account in its consideration of the public interest.

In the **commencement phase**, the Tribunal decides whether there are reasonable grounds to commence a public interest inquiry. In the **investigation phase**, the Tribunal conducts its inquiry. The Tribunal may choose to commence, on its own, a public interest inquiry immediately after an injury finding, or interested persons may request a public interest inquiry.

Commencement Phase

Any party to the injury inquiry or any other group or person affected by the application of the duties may make a written request for a public interest inquiry no later than 45 days after the injury finding. The guideline will detail the information to be included in a request. The key elements will be the identification of the public interest issue with supporting information. This may include, among other things, the availability of goods from other sources; the effects of the duties on domestic competition, on Canadian downstream producers of the goods and on access to goods used as inputs by downstream producers of other goods and services or access to technology; the effects on availability or prices of goods for consumers; and the effects on upstream suppliers of the goods. The Tribunal will return requests that do not meet these requirements for completion within the same 45-day time frame.

When it receives a properly documented request, the Tribunal will notify all those who were sent a copy of the Tribunal's injury finding and invite responses. Responses will be due no later than 21 days after the Tribunal's notice of receipt of a request.

No later than 10 days after the deadline for responses, the Tribunal will decide whether to commence a public interest inquiry. If it decides to commence an inquiry, it will issue a notice of commencement of public interest inquiry and publish it in the *Canada Gazette*. If the Tribunal decides not to commence a public interest inquiry, it will inform all persons who filed requests or responses of that decision. Reasons will be issued within 15 days of the decision.

Investigation Phase

The Tribunal's notice of inquiry will set out the procedures for the inquiry. These will vary depending on such factors as the complexity of the public interest issues raised and the number of parties involved. There will be an opportunity for parties to file and reply to submissions. A public hearing will normally be held. Persons interested in making representations will be required to make a written request to the Secretary no later than 21 days from the date of the Tribunal's notice.

In conducting a public interest inquiry, the Tribunal will examine, in depth, the factors that it considered in reaching a decision to commence an inquiry. Parties will be invited to discuss, in their submissions and replies, potential duty reduction remedies that the Tribunal could apply if it were to be of the opinion that a reduction of duties would be in the public interest.

If, on completion of its inquiry, the Tribunal determined that no reduction or elimination of duties is warranted, it will publish a brief report with reasons. If, however, the Tribunal concluded that it is in the public interest to reduce or eliminate the duties, it will issue a report to the Minister of Finance. The report will contain specific recommendations, with supporting reasons, to eliminate or reduce the anti-dumping or countervailing duties, or a price or prices that are adequate to eliminate injury, retardation or threat of injury to the domestic industry.

The Tribunal will publish a notice of its report in the *Canada Gazette*, and a copy of the report will be sent to all parties to the inquiry.

Interim Review

Section 76.01 of SIMA creates a distinct interim review. In deciding whether an interim review is warranted, the Tribunal will take into account factors such as whether there is a change in circumstances or new facts since the order or finding was made. It will then determine if the order or finding (or any aspect of it)

should be rescinded or continued, with or without amendment. For example, the domestic industry may have ceased production of like goods. An interim review may also be warranted where there are facts that were not put into evidence because they were not discoverable by the exercise of reasonable diligence during the inquiry.

Request for a Review

The Minister of Finance, the Commissioner or any other person or government may make a written request to the Tribunal for an interim review. The Tribunal will send copies of a properly documented request to the parties to the previous inquiry or review. They will have 15 days to file replies. The Tribunal will send a copy of any confidential requests or replies to counsel who have filed declarations and confidentiality undertakings. Where warranted, the Tribunal may consider accepting further submissions following the replies.

The Tribunal will decide whether an interim review is warranted approximately 30 days after receiving a request. If the Tribunal decides that an interim review is not warranted, it will make an order to that effect and publish it in the *Canada Gazette*. It will issue the reasons for its decision approximately 15 days following the decision. If the Tribunal determines that an interim review is warranted, it will issue a notice of review setting out the procedures for the review. The notice will be published in the *Canada Gazette* and will be sent to all known interested parties.

Conduct of an Interim Review

The Tribunal will conduct such proceedings as the nature of the issues warrants. Parties will be given the opportunity to make written submissions to the Tribunal. The Tribunal may make its decision solely on the basis of written submissions, or it may decide to hold a public hearing to receive evidence and submissions from parties. The proceeding may include the issuance of questionnaires.

On completion of an interim review, the Tribunal will, for the review of an entire order or finding, continue, amend or rescind it. For the partial review of an order or finding, the Tribunal may make any other order, as the circumstances require. An order which amends or continues the original order or finding will expire either: (i) on the date that the original order or finding expires; or (ii) where an expiry review is commenced before that date, on the date on which the Tribunal makes its order in that review.

Expiry Review

Section 76.03 of SIMA creates a distinct expiry review. The Tribunal will be responsible for issuing a notice of expiry of an order or finding, deciding if an expiry review is warranted, commencing an expiry review, and deciding if an

order or finding should be rescinded or continued, with or without amendment. There will be three major phases in an expiry review. The first will be the Tribunal's expiry proceeding to decide whether a review is warranted. If the Tribunal decides that a review is warranted, the second phase will be the investigation by the Commissioner to determine whether there is a likelihood of resumed or continued dumping or subsidizing if the order or finding expires. Finally, if the Commissioner determines that such a likelihood exists, the third phase will be the Tribunal's inquiry into the likelihood of injury or retardation.

Expiry Proceeding

The Tribunal will issue a notice of expiry at least 10 months prior to the expiry of the order or finding. Persons and governments will be invited to submit their views on whether the order or finding should be reviewed. The notice will give direction on the issues that should be addressed. These include the likelihood of a continuation or resumption of dumping or subsidizing, the likely volume and price ranges of dumped or subsidized imports, information on the domestic industry's recent performance, the likelihood of injury to the domestic industry if the order or finding were allowed to expire, any other developments affecting, or likely to affect, the performance of the domestic industry, changes in circumstances, domestically or internationally, and any other relevant matter.

Submissions will be made 25 days after the notice of expiry. If there are submissions opposing a review, the Tribunal will circulate all the submissions to those that filed a submission. They will have one week to reply. The Tribunal will circulate confidential submissions to counsel who filed declarations and confidentiality undertakings. Absent exceptional circumstances, the Tribunal will not accept any further submissions following the replies.

On the 50th day after the notice of expiry, the Tribunal will determine whether a review of the order or finding is warranted. If the Tribunal determines that a review is warranted, it will issue a notice of review and notify the Commissioner, interested persons and governments of its decision. If the Tribunal determines that a review is not warranted, it will issue an order, and the reasons for its decision will be issued approximately 15 days following the order. The notice of review or the order not to review will be published in the *Canada Gazette*.

Notice of Review

The notice will set out how the Tribunal will conduct the review and briefly describe the functions of the Tribunal and those of the Commissioner in the review. It will also indicate the deadline for the Commissioner's determination concerning the likelihood of continued or resumed dumping or subsidizing.

**Commissioner's
Investigation**

**—Dumping or
Subsidizing**

The Commissioner will have 120 days to determine whether the expiry of the order or finding is likely to result in the continuation or resumption of dumping or subsidizing. CCRA guidelines in respect of expiry review investigations will provide details on the process.

If the Commissioner finds that there is a likelihood of continued or resumed dumping or subsidizing, the Commissioner will provide the Tribunal with the reasons for the determination, information relating to the enforcement of the order or finding and any other information that has been taken into consideration by the Commissioner, including replies to questionnaires from exporters, importers and domestic producers. If the Commissioner finds that there is no likelihood of continued or resumed dumping or subsidizing, the Tribunal will issue an order rescinding the order or finding.

Tribunal's Inquiry

—Injury

The Tribunal will conduct the injury phase of the expiry review if the Commissioner determines that there is a likelihood of continued or resumed dumping or subsidizing to determine if the continued or resumed dumping or subsidizing is likely to result in injury or retardation. The Tribunal will issue its decision with reasons approximately 130 days after the Commissioner's determination.

Public and protected pre-hearing staff reports will be prepared and, along with the information forwarded by the Commissioner and other information collected by the Tribunal, will be distributed to parties that filed notices of participation. Confidential information and documents will be provided to counsel who filed declarations and confidentiality undertakings. Parties will be given an opportunity to make submissions and to request further information from other parties. A public hearing will normally be held.

In its inquiry, the Tribunal may take into account the factors to be set out in the *Special Import Measures Regulations*. These include factors such as the likely volume and prices of the dumped or subsidized goods, the likely performance of the domestic industry, the likely performance of the foreign industry, the likely impact of the dumped or subsidized goods on the domestic industry, anti-dumping or countervailing measures in a country other than Canada, any changes in market conditions, domestically or internationally, and any other factors relevant in the circumstances.

If the Tribunal determines that the continued or resumed dumping or subsidizing is likely to cause injury or retardation, it will issue an order continuing the order or finding, with or without amendment. If the Tribunal determines that the continued or resumed dumping or subsidizing is not likely to cause injury or retardation, the order or finding will be rescinded.

TRIBUNAL PUBLICATIONS

October 1996

Textile Reference Guide

May 1999

Annual Report for the Fiscal Year Ending March 31, 1999

January 2000

Procurement Review Process: A Descriptive Guide

January 2000

Textile Reference: Annual Status Report

November 1999

Confidentiality Guidelines

Bulletin

Vol. 11, Nos. 1 - 4

**Brochure and
Information
Documents**

A brochure and a series of documents designed to inform the public of the work of the Tribunal are available. They include:

- *Introductory Guide on the Canadian International Trade Tribunal*
- *Information on Appeals from Customs, Excise and SIMA Decisions*
- *Information on Dumping and Subsidizing Inquiries and Reviews*
- *Information on Textile Tariff Investigations*
- *Information on Procurement Review*
- *Information on Import Safeguard Inquiries and Measures*
- *Information on Economic, Trade and Tariff Inquiries*

Publications can be obtained by contacting the Secretary, Canadian International Trade Tribunal, Standard Life Centre, 333 Laurier Avenue West, Ottawa, Ontario K1A 0G7 (613) 993-3595 or they can be accessed on the Tribunal's Web site.

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Publications

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL



ANNUAL REPORT

2000-2001

FOR THE FISCAL YEAR ENDING
MARCH 31, 2001

May 2001

ANNUAL REPORT

**FOR THE FISCAL YEAR ENDING
MARCH 31, 2001**

**Canadian
International
Trade Tribunal**



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sur le site Web du Tribunal

au www.tcce.gc.ca

CHAIRMAN

PRÉSIDENT

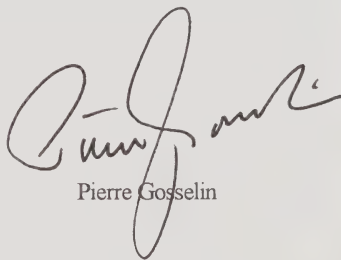
May 17, 2001

The Honourable Paul M. Martin, P.C., M.P.
Minister of Finance
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

I have the honour of transmitting to you, for tabling in the House of Commons, pursuant to section 41 of the *Canadian International Trade Tribunal Act*, the Annual Report of the Canadian International Trade Tribunal for the fiscal year ending March 31, 2001.

Yours sincerely,



Pierre Gosselin

TABLE OF CONTENTS

Chapter I	Tribunal Highlights in Fiscal Year	1
Chapter II	Mandate, Organization and Activities of the Tribunal	7
Chapter III	Dumping and Subsidizing Injury Inquiries and Reviews	13
Chapter IV	Appeals	35
Chapter V	Economic, Trade, Tariff and Safeguard Inquiries	47
Chapter VI	Procurement Review	61
Chapter VII	Toward the Electronic Administrative Record - The Tribunal's Experience	71
	Tribunal Publications Issued During the Fiscal Year	79

LIST OF TABLES

Chapter I	Tribunal's Caseload in Fiscal Year	5
Chapter II	Organization	8
	Legislative Mandate of the Tribunal	10
Chapter III	Preliminary Determinations of Injury Issued Under Subsection 37.1(1) of SIMA Between April 1, 2000, and March 31, 2001, and Preliminary Injury Inquiries Under Subsection 34(2) of SIMA in Progress at Year End	27
	Findings Issued Under Section 43 of SIMA Between April 1, 2000, and March 31, 2001, and Inquiries Under Section 42 of SIMA in Progress at Year End	28
	Orders Issued Under Section 76 of SIMA Between April 1, 2000, and March 31, 2001, and Reviews in Progress at Year End	29
	SIMA Findings and Orders in Force as of March 31, 2001	30
	SIMA Cases Before the Federal Court of Canada or a Binational Panel Between April 1, 2000, and March 31, 2001	33
Chapter IV	Decisions on Appeals	37
	Appeal Decisions Rendered Under Section 67 of the <i>Customs Act</i> and Section 81.19 of the <i>Excise Tax Act</i> Between April 1, 2000, and March 31, 2001	42
	Tribunal Decisions Appealed to the Federal Court of Canada Between April 1, 2000, and March 31, 2001, and Pending as of March 31, 2001	44
	Appeal Decisions of the Federal Court of Canada Rendered Between April 1, 2000, and March 31, 2001	45

Chapter V

Disposition of Requests for Tariff Relief Between April 1, 2000, and March 31, 2001	53
Disposition of a Request for Reconsideration Between April 1, 2000, and March 31, 2001	54
Tariff Relief Recommendations in Place	55

Chapter VI

Summary of Procurement Review Activities	62
Disposition of Procurement Complaints Between April 1, 2000, and March 31, 2001	65
Procurement Cases Before the Federal Court of Canada Between April 1, 2000, and March 31, 2001	69

CHAPTER I

TRIBUNAL HIGHLIGHTS IN FISCAL YEAR

Members

On January 1, 2001, Ms. Patricia M. Close was reappointed to the position of Vice-Chairperson of the Canadian International Trade Tribunal (the Tribunal). Prior to her appointment to the Tribunal in 1997, she was Director of the Tariffs Division at the Department of Finance. Ms. Close also held various senior positions with the departments of Industry, Natural Resources and Finance and, on executive exchanges, with the Bank of Montreal and Petro-Canada.

On September 19, 2000, Mr. Richard Lafontaine was appointed Vice-Chairperson of the Tribunal. Mr. Lafontaine was originally appointed to the position of Member of the Tribunal in 1998. Prior to his appointment, he was Chair of the Standards Council of Canada. He also held senior positions with Warnock Hersey Professional Services Ltd., Lavallin and its successor, SNC-Lavallin, and Inchcape Testing Services.

On November 10, 2000, Mr. Peter F. Thalheimer was reappointed to the position of Member of the Tribunal. Prior to his appointment in 1997, he owned a private law practice in Timmins, Ontario, for the period from 1964 to 1993. Mr. Thalheimer was elected to the House of Commons in 1993, representing the riding of Timmins-Chapleau, and served as Vice-Chair of the Standing Committee on Natural Resources.

On February 19, 2001, Ms. Ellen Fry was appointed to the position of Member of the Tribunal. Prior to her appointment, she was General Counsel at the Department of Justice, Client Driven Services Secretariat. Ms. Fry previously held the position of General Counsel at the Department of Industry and the Department of Transport and subsequently at the Department of the Environment where she managed legal work on trade issues. Ms. Fry also had experience working in a private law firm.

During the fiscal year, Mr. Raynald Guay resigned as Vice-Chairperson of the Tribunal and the term of Mr. Arthur B. Trudeau as temporary Member of the Tribunal expired. The Tribunal takes this opportunity to recognize these Members' valuable contribution to the Tribunal's work.

Senior Staff

On January 26, 2001, Mr. Gerry Stobo resigned as General Counsel of the Tribunal to pursue his career in a private law firm. The Tribunal would like to

take this opportunity to recognize Mr. Stobo's significant contribution to the Tribunal's work and the quasi-judicial community. He was instrumental in developing, in conjunction with the Canadian Centre for Management Development, a training program for members who are newly appointed to federal boards and tribunals. He was also involved in initiatives relating to ethics and values in the quasi-judicial environment. Finally, Mr. Stobo was actively involved in the activities of the Canadian Bar Association and was elected first President of the Canadian Bar Association's Public Sector Lawyers' Conference whose objective is to promote a forum for public sector lawyers whose interests are different from those of lawyers in private practice.

Legislative Amendments to the Special Import Measures Act and the Canadian International Trade Tribunal Act

Legislative amendments to the *Special Import Measures Act* (SIMA) and the *Canadian International Trade Tribunal Act* (CITT Act) came into force on April 15, 2000, bringing changes to the jurisdiction, procedures and processes of the Tribunal.

In order to familiarize stakeholders with those changes, the Tribunal issued a series of interim guidelines dealing with preliminary injury inquiries, public interest inquiries, interim reviews and expiry reviews. These documents are available on the Tribunal's Web site (www.citt.gc.ca).

Dumping and Subsidizing Inquiries and Reviews

In the fiscal year, the Tribunal issued five preliminary determinations of injury under subsection 37.1(1) of SIMA. One preliminary injury inquiry was terminated, and one was still in progress at the end of the year. The Tribunal also issued six findings following injury inquiries under section 42 of SIMA and four orders following reviews under section 76. One injury inquiry was suspended as a result of the acceptance by the Commissioner of the Canada Customs and Revenue Agency (CCRA) of an undertaking offered by the exporter of the subject goods. At the end of the year, there were three inquiries and two reviews in progress.

Public Interest Investigations

On May 1, 2000, the Tribunal, under subsection 43(1) of SIMA, found that the dumping in Canada of iodinated contrast media used for radiographic imaging, originating in or exported from the United States (including the Commonwealth of Puerto Rico) (NQ-99-003) had caused material injury to the domestic industry. Having received representations on the question of public interest, the Tribunal decided to initiate a public interest investigation under section 45 of SIMA. On August 29, 2000, the Tribunal issued its report to the Minister of Finance recommending a reduction in the anti-dumping duties on certain iodinated contrast media from the United States (including the Commonwealth of Puerto Rico).

Trade and Tariff Reference

On August 1, 2000, the Tribunal, under subsection 43(1) of SIMA, found that the dumping in Canada of certain refrigerators, dishwashers and dryers originating in or exported from the United States (NQ-2000-001) had caused material injury to the domestic industry. Having received representations on the question of public interest, the Tribunal determined that there was no public interest issue that warranted further investigation under section 45 of SIMA.

Textiles

During the fiscal year, the Tribunal issued eight reports to the Minister of Finance concerning requests for tariff relief. Four requests for tariff relief were in progress at the end of the year. In addition, the Tribunal's sixth annual status report on the investigation process was submitted to the Minister of Finance on January 31, 2001.

Appeals

The Tribunal issued decisions on 58 appeals from decisions of the Department of National Revenue and the CCRA made under the *Customs Act* and the *Excise Tax Act*.

Procurement Review

The Tribunal received 78 complaints during the fiscal year. The Tribunal issued 28 written determinations of its findings and recommendations. Nine of these determinations related to cases that were in progress at the end of fiscal year 1999-2000. In 13 of the 28 written determinations, the complaints were determined to be valid or valid in part.

In July 1999, the governments of the Republic of Korea and Canada signed the *Agreement on the Procurement of Telecommunications Equipment* establishing rules and procedures with respect to government procurement of telecommunications equipment and incidental services by manufacturers and service providers of both countries. The agreement also provides for the application of non-discriminatory rules with respect to the procurement of telecommunications equipment by listed government entities. Under the terms of the agreement, the federal government is required to adopt and maintain bid protest procedures for procurement that it covers.

Given that the Tribunal is the bid challenge authority for procurement complaints under the *North American Free Trade Agreement* (NAFTA), the *Agreement on Internal Trade* (AIT) and the *Agreement on Government Procurement* (AGP), the federal government has determined that the Tribunal would be Canada's bid challenge authority in respect of the *Agreement on the*

Procurement of Telecommunications Equipment. The *Canadian International Trade Tribunal Procurement Inquiry Regulations* were therefore amended. These amendments came into force on November 1, 2000.

Rules of Procedure

The revised *Canadian International Trade Tribunal Rules* (Rules of Procedure) came into force on April 15, 2000. They eliminate unnecessary rules, increase efficiency and transparency and preserve fairness. Procedures have also been modified to reflect technological changes. The revised Rules of Procedure also incorporate new rules to accommodate legislative amendments to SIMA and the CITT Act that came into effect on April 15, 2000. An unofficial version of the Rules of Procedure is available on the Tribunal's Web site.

Access to Tribunal Notices, Decisions and Publications

Tribunal notices and decisions are published in the *Canada Gazette*. Those relating to procurement complaints are also published in *Government Business Opportunities*.

The Tribunal's Web site provides an exhaustive repository of all Tribunal notices, decisions and publications, as well as other information relating to the Tribunal's current activities. The Tribunal also launched a new subscriber alert service. This new service gives a subscriber the flexibility to choose those areas of the Tribunal's jurisdiction for which it wants to be notified of each new posting on the Tribunal's Web site. It also allows subscribers to register and deregister on-line. This service is available free of charge.

Meeting Statutory Deadlines (Timeliness)

All the Tribunal's inquiries were completed on time, and decisions were issued within the statutory deadlines. For appeals of customs and excise decisions that are not subject to statutory deadlines, the Tribunal usually issues, within 120 days of the hearing, a decision on the matter in dispute, including the reasons for its decision.

Tribunal's Caseload in Fiscal Year

	Cases Brought Forward from Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions/ Reports Issued	Cases Withdrawn/ Not Initiated/ Terminated/ Suspended	Cases Outstanding (March 31, 2001)
SIMA ACTIVITIES						
Preliminary Injury Inquiries	-	7	7	5	1	1
Inquiries	2	8	10	6	1	3
Public Interest Inquiries	-	2	2	2	-	-
Requests for Interim Review	-	2	2	2	-	-
Expiries ¹	-	3	3	2	1	-
Expiry Reviews	4	2	6	4	-	2
APPEALS						
<i>Customs Act</i>	113	30	143	36	28	79
<i>Excise Tax Act</i>	136	27	163	22	52	89
SIMA	<u>1</u>	<u>3</u>	<u>4</u>		<u>2</u>	<u>2</u>
Total	250	60	310	58	82	170
ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES						
Textile Reference						
Requests for Tariff Relief	5	8	13	8	1	4
Expiries ¹	-	-	-	-	-	-
Reviews	-	-	-	-	-	-
Requests for Reconsideration		1	1	1	-	-
Economic, Trade and Tariff-related Matters	-	-	-	-	-	-
PROCUREMENT REVIEW ACTIVITIES						
Complaints	9	78	87	28	37	22

1. As a result of a different method of reporting expiries, expiries for which decisions had not been made prior to the end of the previous fiscal year are detailed in column one. The fourth column refers to decisions to review.

CHAPTER II

MANDATE, ORGANIZATION AND ACTIVITIES OF THE TRIBUNAL

Introduction

The Tribunal is an administrative tribunal operating within Canada's trade remedies system. It is an independent quasi-judicial body that carries out its statutory responsibilities in an autonomous and impartial manner and reports to Parliament through the Minister of Finance.

The main legislation governing the work of the Tribunal is the CITT Act, SIMA, the *Customs Act*, the *Excise Tax Act*, the *Canadian International Trade Tribunal Regulations* (CITT Regulations), the *Canadian International Trade Tribunal Procurement Inquiry Regulations* and the Rules of Procedure.

Mandate

The Tribunal's primary mandate is to:

- conduct inquiries into whether dumped or subsidized imports have caused, or are threatening to cause, material injury to a domestic industry;
- hear appeals of decisions of the CCRA made under the *Customs Act*, the *Excise Tax Act* and SIMA;
- conduct inquiries into complaints by potential suppliers concerning federal government procurement that is covered by NAFTA, the AIT, the World Trade Organization (WTO) AGP and the *Agreement on the Procurement of Telecommunications Equipment*;
- conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in production operations;
- conduct safeguard inquiries into complaints by domestic producers that increased imports are causing, or threatening to cause, serious injury to domestic producers; and
- conduct inquiries and provide advice on such economic, trade and tariff issues as are referred to the Tribunal by the Governor in Council or the Minister of Finance.

Method of Operation

In carrying out most of its responsibilities, the Tribunal conducts inquiries with hearings that are open to the public. These are normally held at the Tribunal's offices in Ottawa, Ontario, although hearings may also be held elsewhere in Canada, in person or through videoconferencing. The Tribunal has

rules and procedures similar to those of a court of law, but not quite as formal or strict. The CITT Act states that hearings, generally conducted by a panel of three members, should be carried out as “informally and expeditiously” as the circumstances and considerations of fairness permit. The Tribunal has the power to subpoena witnesses and require parties to submit information. The CITT Act contains provisions for the protection of confidential information. Only independent counsel who have filed declarations and confidentiality undertakings may have access to confidential information.

The Tribunal’s decisions may be reviewed by or appealed to, as appropriate, the Federal Court of Canada and, ultimately, the Supreme Court of Canada, or a binational panel under NAFTA, in the case of a decision affecting U.S. and/or Mexican interests in SIMA. Governments that are members of the WTO may challenge some of the Tribunal’s decisions before a dispute settlement panel under the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes*.

Membership

The Tribunal may be composed of nine full-time members, including a Chairperson and two Vice-Chairpersons, who are appointed by the Governor in Council for a term of up to five years that is renewable once. A maximum of five additional members may be temporarily appointed. The Chairperson is the Chief Executive Officer responsible for the assignment of members and for the management of the Tribunal’s work. Members come from a variety of educational backgrounds, careers and regions of the country.

Organization

Members of the Tribunal, currently seven, are supported by a permanent staff of 86 people. Its principal officers are the Secretary, responsible for corporate management, public relations, dealings with other government departments and other governments, and the court registry functions of the Tribunal; the Executive Director, Research, responsible for the investigative portion of inquiries, for the economic and financial analysis of firms and industries and for other fact finding required for Tribunal inquiries; and the General Counsel, responsible for the provision of legal services.

Consultations

Through the Tribunal/Canadian Bar Association Bench and Bar Committee, the Tribunal provides a forum to promote discussion with the bar on issues of importance. The committee also includes representatives from the trade consulting community. The Tribunal consults with the bar, representatives of industries and others that appear or are likely to appear before the Tribunal to exchange views on new procedures being considered by the Tribunal prior to their distribution as guidelines or practice notices. The Tribunal also briefs federal government departments and trade associations on its procedures.

Organization

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LEGAL SERVICES BRANCH

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* Resigned during the fiscal year

** Temporary Member whose term expired during the fiscal year

Legislative Mandate of the Tribunal

Section	Authority
CITT Act	
18	Inquiries on Economic, Trade or Commercial Interests of Canada by Reference from the Governor in Council
19	Inquiries Into Tariff-related Matters by Reference from the Minister of Finance
19.01	Safeguard Inquiries Concerning Goods Imported from the United States and Mexico
19.02	Mid-term Reviews of Safeguard Measures and Report
20	Safeguard Inquiries Concerning Goods Imported Into Canada and Inquiries Into the Provision, by Persons Normally Resident Outside Canada, of Services in Canada
23	Safeguard Complaints by Domestic Producers
23(1.01) and (1.02)	Safeguard Complaints by Domestic Producers Concerning Goods Imported from the United States and Mexico
30.08 and 30.09	Safeguard Measures
30.11	Complaints by Potential Suppliers in Respect of Designated Contracts
SIMA	
33 and 37	Advice to Commissioner
34, 35 and 36	Preliminary Inquiry
37.1	Preliminary Determination of Injury
42	Inquiries With Respect to Injury Caused by the Dumping and Subsidizing of Goods
43	Findings of the Tribunal Concerning Injury
44	Recommencement of Inquiry (on Remand from the Federal Court of Canada or a Binational Panel)
45	Public Interest
46	Advice to the Commissioner
61	Appeals of Redeterminations of the Commissioner Made Pursuant to Section 59 Concerning Whether Imported Goods Are Goods of the Same Description as Goods to Which a Tribunal Finding Applies, Normal Values and Export Prices or Subsidies
76	Reviews of Findings of Injury Initiated by the Tribunal or at the Request of the Commissioner or Other Interested Persons

Legislative Mandate of the Tribunal (cont'd)

Section	Authority
76.01	Interim Reviews of Orders by Tribunal
76.02	Reviews of Orders by Tribunal on Referral Back and Re-hearing
76.03	Expiry Reviews
76.1	Reviews of Findings of Injury Initiated at the Request of the Minister of Finance
89	Rulings on Who Is the Importer

Customs Act

67	Appeals of Decisions of the Commissioner Concerning Value for Duty and Origin and Classification of Imported Goods
68	Appeals to the Federal Court of Canada
70	References of the Commissioner Relating to the Tariff Classification or Value for Duty of Goods

Excise Tax Act

81.19, 81.21, 81.22, 81.23, 81.25 and 81.33	Appeals of Assessments and Determinations of the Minister of National Revenue
81.32	Requests for Extension of Time for Objection or Appeal

Softwood Lumber Products Export Charge Act

18	Appeals of Assessments and Determinations of the Minister of National Revenue
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Energy Administration Act

13	Declarations Concerning the Amount of Oil Export Charge
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CHAPTER III

DUMPING AND SUBSIDIZING INJURY INQUIRIES AND REVIEWS

The Process

Under SIMA, the CCRA may impose anti-dumping and countervailing duties when domestic producers are injured by imports of goods into Canada:

- at prices lower than sales in the home market or lower than the cost of production (dumping), or
- that have benefited from certain types of government grants or other assistance (subsidizing).

The determination of dumping and subsidizing is the responsibility of the CCRA. The Tribunal determines whether such dumping or subsidizing has caused “material injury” or “retardation” or is threatening to cause material injury to a domestic industry.

Preliminary Injury Inquiries

A Canadian producer or an association of Canadian producers begins the process of seeking relief from alleged injurious dumping or subsidizing by making a complaint to the Commissioner of the CCRA. If the Commissioner initiates a dumping or subsidizing investigation, the Tribunal initiates a preliminary injury inquiry under subsection 34(2) of SIMA. The Tribunal seeks to make all interested parties aware of the inquiry. It issues a notice of commencement of preliminary injury inquiry that is published in the *Canada Gazette* and forwarded to all known interested persons.

In the inquiry, the Tribunal determines whether the evidence discloses a “reasonable indication” that the dumping or subsidizing has caused injury or retardation, or is threatening to cause injury. The primary evidence is the information received from the Commissioner and submissions from parties. The Tribunal seeks the views of parties on what are the like goods and which domestic producers comprise the domestic industry. In most cases, the Tribunal does not issue questionnaires or hold a public hearing. The Tribunal makes a preliminary determination after an inquiry of up to 60 days.

If the Tribunal finds that there is a reasonable indication that the dumping or subsidizing has caused injury or retardation, or is threatening to cause injury, it makes a determination to that effect, and the Commissioner continues the dumping or subsidizing investigation. If there is no reasonable indication that the

Preliminary Injury Inquiries Completed in the Fiscal Year

dumping or subsidizing has caused injury or retardation, or is threatening to cause injury, the Tribunal terminates the inquiry, and the Commissioner terminates the dumping or subsidizing investigation. The Tribunal issues reasons 15 days after its determination.

The Tribunal completed five preliminary injury inquiries in the fiscal year. They concerned *Certain Grain Corn* (PI-2000-001), *Garlic* (PI-2000-002), *Certain Concrete Reinforcing Bar* (PI-2000-003), *Certain Corrosion-resistant Steel Sheet* (PI-2000-005) and *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (PI-2000-006). The Tribunal terminated its inquiry with respect to *Pulp-dewatering Screw Presses* (PI-2000-004) after the Commissioner terminated his dumping investigation. One preliminary injury inquiry was still in progress at the end of the fiscal year.

Table 1 summarizes the Tribunal's preliminary injury inquiry activities during the fiscal year.

Advice Given Under Section 37 of SIMA

When the Commissioner decides not to initiate a dumping or subsidizing investigation because there is no reasonable indication of injury, the Commissioner or the complainant may, under section 33 of SIMA, refer the matter to the Tribunal for an opinion as to whether or not the evidence before the Commissioner discloses a reasonable indication that the dumping or subsidizing has caused material injury or retardation or is threatening to cause material injury to a domestic industry.

Section 37 of SIMA requires the Tribunal to render its advice within 30 days. The Tribunal makes its decision, without holding a public hearing, on the basis of the information before the Commissioner when the decision regarding initiation was reached.

There were no references under section 33 of SIMA during the fiscal year.

Final Injury Inquiries

If the Commissioner makes a preliminary determination of dumping or subsidizing, the Tribunal commences a final injury inquiry under section 42 of SIMA. The CCRA may levy provisional duties on imports from the date of the preliminary determination. The Commissioner continues his investigation to a final determination of dumping or subsidizing.

As in a preliminary injury inquiry, the Tribunal seeks to make all interested parties aware of its inquiry. It issues a notice of commencement of inquiry that is published in the *Canada Gazette* and forwarded to all known interested parties.

In conducting final injury inquiries, the Tribunal requests information from interested parties, receives representations and holds public hearings. The Tribunal's staff carries out extensive research for each inquiry. The Tribunal sends questionnaires to domestic manufacturers, importers and purchasers and to foreign producers. Based primarily on questionnaire responses, the Tribunal's staff prepares a report that focuses on the factors that the Tribunal considers in arriving at decisions regarding material injury or retardation or threat of material injury to a domestic industry. The reports become part of the case record and are made available to counsel and parties.

Parties participating in the proceedings may conduct their own cases or be represented by counsel. Confidential or business-sensitive information is protected in accordance with provisions of the CITT Act.

The *Special Import Measures Regulations* prescribe factors that the Tribunal may consider in its determination of whether the dumping or subsidizing of goods has caused material injury or retardation or is threatening to cause material injury to a domestic industry. These factors include, among others, the volume of dumped or subsidized goods, the effects of the dumped or subsidized goods on prices and the impact of the dumped or subsidized goods on production, sales, market shares, profits, employment and utilization of production capacity.

The Tribunal holds a public hearing about 90 days after the commencement of the inquiry, usually starting just before the Commissioner makes a final determination of dumping or subsidizing. At the public hearing, domestic producers attempt to persuade the Tribunal that the dumping or subsidizing of goods has caused material injury or retardation or is threatening to cause material injury to a domestic industry. Importers and exporters challenge the domestic producers' case. After cross-examination by parties and examination by the Tribunal, each side has an opportunity to respond to the other's case and to summarize its own. In many inquiries, the Tribunal calls witnesses who are knowledgeable about the industry and market in question. Parties may also seek exclusions from a Tribunal finding of material injury or retardation or threat of material injury to a domestic industry.

The Tribunal must issue its finding within 120 days from the date of the preliminary determination by the Commissioner. The Tribunal has an additional 15 days to issue a statement of reasons explaining its finding. A Tribunal finding of material injury or retardation or threat of material injury to a domestic industry is the legal authority for the imposition of anti-dumping or countervailing duties by the CCRA.

**Final Injury
Inquiries
Completed in the
Fiscal Year**

The Tribunal completed six final injury inquiries in the fiscal year. They concerned *Iodinated Contrast Media* (NQ-99-003), *Certain Carbon Steel Plate* (NQ-99-004), *Certain Refrigerators, Dishwashers and Dryers* (NQ-2000-001), *Certain Stainless Steel Round Bar* (NQ-2000-002), *Waterproof Footwear and Bottoms* (NQ-2000-004) and *Certain Grain Corn* (NQ-2000-005). In 1999, the estimated values of the Canadian markets were \$20 million for iodinated contrast media, \$520 million for carbon steel plate, \$280 million, \$175 million and \$160 million, respectively, for refrigerators, dishwashers and dryers, \$30 million for stainless steel round bar and \$100 million for waterproof footwear. The western Canadian regional market for grain corn in 1999 was estimated to be \$75 million.

The Tribunal suspended its inquiry in *Bingo Paper* (NQ-2000-003) following the acceptance of an undertaking by the Commissioner.

***Iodinated Contrast
Media***

NQ-99-003

*Finding:
Injury
(May 1, 2000)*

This inquiry involved dumped imports from the United States. The sole domestic producer was Mallinckrodt Canada Inc. (MCI), a wholly owned subsidiary of Mallinckrodt Inc. Iodinated contrast media is a medical imaging agent used in X-ray diagnostic procedures.

The Tribunal concluded that dumped imports had caused injury to MCI in the form of eroded prices and that the injury was material. The evidence showed aggressive price offers for dumped imports at several accounts and the loss of a major account by MCI. While recognizing that other factors contributed to the price declines in the Canadian market, such as the purchasing power of buying groups, healthcare budget constraints, product cycles and the phasing out of patent protection, the Tribunal was of the view that the magnitude of the price erosion could only be attributed to the dumping.

In response to a submission that MCI had led prices down, the Tribunal was of the view that importers could compete with the domestic industry's prices, but only up to a point where the product was offered at dumped prices, which caused injury to the domestic industry. With respect to the fact that the vast majority of MCI's production was exported, the Tribunal found that the industry had benefited from its export performance because, by distributing the fixed costs on a larger volume, it helped offset the injurious effects of dumping in the domestic market.

***Certain Carbon Steel
Plate***

NQ-99-004

*Finding:
Injury
(June 27, 2000)*

This inquiry concerned dumped imports from Brazil, Finland and Ukraine, and dumped and subsidized imports from India, Indonesia and Thailand. There were three domestic producers of carbon steel plate: Algoma Steel Inc., Stelco Inc. (Stelco) and IPSCO Inc. (IPSCO). Several exporters from Brazil, Ukraine, India and Indonesia participated in the inquiry.

The Tribunal found that sales of the dumped and subsidized subject carbon steel plate at prices substantially below the domestic producers' and non-subject countries' selling prices had caused material injury to the domestic industry. The Tribunal was of the view that the subject imports gained significant sales volume and market share in 1998 and 1999 at the expense of the domestic producers. In an effort to regain sales volume and market share that were lost in late 1998 and in 1999, the domestic producers continued to reduce transaction prices in order to meet the lower prices of the subject imports. Together, the price erosion and the loss in sales volume and market share resulted in a deterioration of the domestic producers' financial performance.

Exporters of carbon steel plate argued that other factors had caused injury to the domestic producers. These factors included supply constraints within the domestic industry, efficiency enhancements by domestic producers that drove prices down, increased costs and financial expenses unrelated to plate production, intra-industry competition and the impact of U.S. pricing on the Canadian market. The Tribunal reviewed the effects of these other factors to ensure that it did not attribute to the subject goods any injury caused by these other factors.

***Certain Refrigerators,
Dishwashers and
Dryers***

NQ-2000-001

*Finding:
Injury
(August 1, 2000)*

This inquiry concerned dumped imports of three kinds of household appliances, refrigerators, dishwashers and dryers, manufactured by White Consolidated Industries, Inc. (WCI) and Whirlpool Corporation (Whirlpool) of the United States. The sole domestic producer was Camco Inc. (Camco). Several exporters, importers, distributors and retailers of household appliances and the Commissioner of Competition participated in the inquiry.

The Tribunal found that dumped imports had caused material injury to Camco's production of refrigerators, dishwashers and dryers. In the Tribunal's view, the dumped imports forced Camco to meet the low prices of the dumped imports or to lose sales. In this regard, the Tribunal considered that price was a central factor in the purchaser's decision to buy a specific line of appliances and that the extent of the dumping afforded imports a great deal of room to acquire or maintain market share. The evidence showed that Camco experienced a significant loss of market share as a direct result of the increased sales of imports at dumped prices. In addition, the Tribunal found that Camco experienced price suppression and, to a lesser extent, price erosion. The Tribunal found that the magnitude of Camco's market share declines in each of the product markets,

especially during a period of market growth, was material and constituted injury to the production of like goods by the domestic industry.

While much of the injury occurred in the builder and authorized builder-distributor (ABD) market segment, the Tribunal also found that Camco experienced a significant loss of market share in the retail segment of the market. The Tribunal also found that Camco's gross margins for refrigerators, dishwashers and dryers declined significantly. The Tribunal was convinced that these decreases in gross margins were related, to a significant degree, to the large and increasing competition with dumped imports.

In considering factors other than dumping that might have caused injury to Camco, the Tribunal noted that there were almost always other factors present. It also stated that the dumping need not be the only or principal cause of the injury, but that the injury caused by the dumping must be shown to be material. The Tribunal was not convinced that the other factors that it examined could explain the large loss of market share for refrigerators, dishwashers and dryers. The factors included Camco's selling and marketing practices, business strategies and decisions, selling policies in the builder and ABD markets, product quality, the adequacy of Camco's investment and rationalization of production, export sales and the impact of imports of non-subject appliances and Camco's lack of success at the Sears account.

The Tribunal excluded from its findings refrigerators with a capacity of 18.5 cubic feet and above, dishwashers with stainless steel tubs, gas or electric dryers with controls at the front, removable tops and chassis designed to be stacked on top of washers, and refrigerators, dishwashers and dryers destined for use in the Habitat for Humanity Program.

***Certain Stainless
Steel Round Bar***

NQ-2000-002

*Finding:
Injury
(October 27, 2000)*

This inquiry involved dumped and subsidized imports from Brazil and subsidized imports from India. Atlas Specialty Steels (Atlas) was the sole domestic producer of stainless steel bar. An exporter and an importer also participated in the inquiry.

After determining that the acquisition of Atlas by Slater Steel Inc. (Slater) during the inquiry had no bearing on what constitutes the domestic industry, the Tribunal concluded that Atlas had suffered a significant deterioration in performance in the form of lost sales volumes and market share, price erosion and suppression, and reduced revenue and profitability. Moreover, the injury suffered by Atlas as a result of imports of the subject goods was clearly material. The evidence showed that imports of stainless steel bar from the subject countries increased steadily and replaced imports from the countries, other than India, subject to two previous findings in Inquiry Nos. NQ-98-001 and NQ-98-003. As

**Waterproof Footwear
and Bottoms**

NQ-2000-004

*Finding:
Threat of Injury
(December 8, 2000)*

a consequence, in 1999, Atlas's sales of stainless steel bar declined sharply, and it lost significant market share. Despite a strong market in the first half of 2000, Atlas could not increase its market share.

The Tribunal also found that Atlas's large loss in market share, along with eroded prices through 1999, had a direct impact on its financial performance. The deterioration of Atlas's financial performance in 1999 and the lack of any significant improvement in the first quarter of 2000 occurred despite the previous injury findings. Moreover, the Tribunal was not convinced that any of the other factors examined had contributed to the injury caused by the subject imports.

This inquiry involved dumped imports from China. The domestic industry consisted of 10 known producers, 5 of which were members of The Shoe Manufacturers' Association of Canada and accounted for about 99 percent of the total domestic production of waterproof footwear and bottoms. Several importers, as well as the Retail Council of Canada, participated in the inquiry.

Although dumped imports from China had increased substantially, albeit from low levels, in the period leading up to the preliminary determination, the Tribunal was not convinced that they had caused injury to the domestic industry. A decline in the market for waterproof footwear, as a result of warmer climatic conditions, had a significant negative effect on the domestic industry's performance. Milder weather also led to a change in demand towards lighter boots, while the focus of the industry's production had been on the more traditional type of winter boots. Approximately two thirds of the subject imports consisted of flocked waterproof footwear, a product that satisfied consumer demand for lighter-weight waterproof footwear with a fashion flair. Another product that was imported from China was women's fully waterproof nylon boots with non-boat-like construction bottoms that also met similar consumer demands. There were no comparable products manufactured by the domestic industry. In addition, while there was some evidence that other dumped imports had a negative impact on the domestic industry, the Tribunal was of the view that the injury was not material.

However, the Tribunal considered that the acquisition of the Sorel brand name by Columbia Sportswear Company (Columbia) from a major Canadian producer, Kaufman Footwear, Division of William H. Kaufman Inc., that declared bankruptcy soon after the preliminary determination, could have serious consequences for the domestic industry. In fact, the evidence disclosed a real possibility that Columbia could supply the Canadian market with Sorel footwear produced in China and offered in Canada at dumped prices. This could quickly destabilize prices in the traditional Canadian winter boot market, which had been the mainstay of the Canadian industry. This, together with China's huge

production capacity, strong export orientation and history of dumping, led the Tribunal to conclude that the domestic industry would face a threat of material injury from dumped imports from China. The Tribunal excluded from its finding flooded waterproof footwear and women's fully waterproof nylon boots with non-boat-like construction bottoms.

Certain Grain Corn

NQ-2000-005

*Finding:
No Injury
(March 7, 2001)*

This inquiry involved dumped and subsidized imports from the United States into Canada for use or consumption west of the Manitoba-Ontario border. The producers represented by the Manitoba Corn Growers Association Inc. accounted for about 92 percent of the western Canadian production of grain corn. Several importers and users of grain corn also participated in the inquiry.

The Tribunal noted that the injury standard for a regional market is very stringent. The evidence must disclose that the subject goods have injured the producers of "all or almost all" grain corn production in Western Canada.

In this regard, the Tribunal found that dumped and subsidized imports from the United States had caused the prices of corn sold in Western Canada to decline, causing financial injury to many domestic producers. However, the Tribunal also found that there was a certain proportion of commercial production that had not been materially injured. Evidence showed that some producers were able to achieve better than average prices for their corn despite the presence of dumped and subsidized imports from the United States. In addition, certain major corn users pay a higher-than-average price for domestic corn because it has certain qualities or characteristics that they require for their operations. It was apparent that some producers were able to achieve reasonable rates of return, even in the 1999-2000 crop year when U.S. import prices were at their lowest levels.

In addition, the Tribunal identified another category of corn grower that was not affected by dumped and subsidized imports in the same way as producers that operate in the commercial market. The Tribunal noted that diversified farmers who have livestock operations and who also grow their own corn for feed are able to achieve certain synergies between their animal and grain operations. The evidence showed that they have costs of production that are much lower than the industry average. On-farm users are also effectively insulated from most market price fluctuations. This price protection, combined with their lower-than-average costs of production, puts them on quite a different footing from commercial corn growers as far as the effects of dumped and subsidized imports are concerned. Moreover, corn grown for on-farm feed use was a significant and growing part of the western Canadian corn-growing industry, comprising as much as 30 percent of total production according to some estimates.

Inquiries in Progress at the End of the Fiscal Year

Thus, while many domestic producers that sold their corn on the commercial market had been injured by the subject imports, when the non-injured production represented by on-farm use was combined with the portion of commercial sales that had achieved reasonable returns, there was little doubt that the “all or almost all” injury threshold had not been met in this case.

There were three inquiries in progress at the end of the fiscal year: *Garlic, Fresh or Frozen* (NQ-2000-006), *Certain Concrete Reinforcing Bar* (NQ-2000-007) and *Certain Corrosion-resistant Steel Sheet* (NQ-2000-008).

The inquiry on garlic concerns dumped imports from China and Vietnam. There are over 100 producers of garlic, most of whom are represented by the Garlic Growers Association of Ontario.

The inquiry on concrete reinforcing bar concerns dumped imports from Indonesia, Japan, Latvia, Moldova, Poland, Chinese Taipei and Ukraine. The Canadian producers of concrete reinforcing bar are Stelco, Co-Steel Inc., Gerdau Courtice, Gerdau MRM Steel, Ispat Sidbec Inc. (Ispat Sidbec) and Slater. Two exporters are parties to the inquiry.

The inquiry on corrosion-resistant steel sheet concerns dumped imports from China, Malaysia, the Russian Federation, South Africa and Chinese Taipei, and dumped and subsidized imports from India. The Canadian producers of corrosion-resistant steel sheet are Dofasco Inc., Stelco, Sorevco and Continuous Colour Coat Limited. Several importers, exporters and the government of an exporting country are parties to the inquiry.

Table 2 summarizes the Tribunal’s final injury inquiry activities during the fiscal year.

Public Interest Inquiry Under Section 45 of SIMA

The Tribunal may initiate a public interest inquiry following a finding of injury caused by dumped or subsidized imports. The Tribunal may decide, either as a result of a request from an interested person or on its own initiative, that there are reasonable grounds to consider that the imposition of part or all of the duties may not be in the public interest. The Tribunal then conducts a public interest inquiry pursuant to section 45 of SIMA. The result of this inquiry may be a report to the Minister of Finance recommending that the duties be reduced and by how much. The Tribunal received two requests for a public interest inquiry during the fiscal year.

After the Tribunal’s finding of injury in *Iodinated Contrast Media* (NQ-99-003), several interested persons, including medical associations, public

health advocates, radiologist associations, hospitals, buying groups, importers and the Commissioner of Competition, made representations that the Tribunal should initiate a public interest investigation. MCI, the sole domestic producer, opposed an investigation. After considering these representations, the Tribunal was of the view that a number of factors existed which, taken together, demonstrated a public interest concern worthy of further investigation. The Tribunal commenced a public interest investigation (PB-2000-001) on June 15, 2000.

The Tribunal's investigation included a public hearing, where it heard testimony from witnesses representing the parties that had expressed an interest in the matter. After the investigation, the Tribunal reported to the Minister of Finance that it was of the opinion that the imposition of the anti-dumping duties in the full amount on contrast media was not in the public interest. The report, filed on August 29, 2000, included a recommendation for the reduction of the duties and a description of how the recommendation should be implemented.

The Tribunal determined that a reduction of the anti-dumping duties would address the concern that a large increase in prices of contrast media would lead to pressures on hospital budgets, which would result in a reduction of the number of procedures that could be undertaken on patients. A reduction of the duties would also enable both Nycomed Amersham Canada Ltd. and Bracco Diagnostics Canada Inc. to continue to be an alternative to MCI for buyers of contrast media, thus addressing the public interest concern that radiologists require a choice of products in order to provide the greatest safety and comfort for patients. On the other hand, a price for imported contrast media that would be somewhat higher than during the injury inquiry period would maintain a level of protection from injurious dumping for the domestic industry and provide scope for MCI to increase its revenues.

The Tribunal determined a "public interest price" for contrast media that would balance the various public interests. Although this public interest price was higher than recent market prices, it was much less than the estimated full duty-paid price. The effect of the implementation of the Tribunal's recommendation would be the reduction of normal values by more than 60 percent. The recommendation was based on the CCRA's existing method of anti-dumping enforcement and duty collection.

On August 29, 2000, the Tribunal received requests from several appliance retailers, importers and exporters and an environmental group for a public interest inquiry to eliminate or reduce the anti-dumping duties applied as a result of the Tribunal's injury findings in *Certain Refrigerators, Dishwashers and Dryers* (NQ-2000-001). On September 12, 2000, the domestic producer and an importer made submissions opposing a public interest inquiry.

On October 3, 2000, in its consideration (PB-2000-002), the Tribunal concluded that it was not convinced that there was a public interest that warranted further investigation. Although price increases normally occur after the removal of injurious dumping, price competition in the Canadian market continued to be strong among a number of suppliers of appliances, including WCI and Whirlpool. The weighted average margins of dumping were relatively low, and consumers continued to have access to a full range of products. For the Tribunal to initiate a public interest investigation, it must see clear and compelling evidence of effects or potential effects that extend beyond the commercial interests of industry players into the broader public domain.

Importer Ruling

Under section 90 of SIMA, the Commissioner may request the Tribunal to rule on the question as to which of two or more persons is the importer of goods on which anti-dumping or countervailing duties are payable. If the Tribunal identifies as the importer a person other than the one specified by the Commissioner, the Tribunal may reconsider its original finding of material injury under section 91.

There were no requests for importer rulings in the fiscal year.

Requests for an Interim Review

The Tribunal may review its findings of injury or orders at any time, on its own initiative or at the request of the Minister of Finance, the Commissioner or any other person or government (section 76.01 of SIMA). The Tribunal commences an interim review where one is warranted and determines if the finding or order (or any aspect of it) should be rescinded or continued to its expiry date, with or without amendment.

An interim review may be warranted where there is a reasonable indication that sufficient new facts have arisen or that there has been a sufficient change in the circumstances that led to the finding or order. For example, since the finding or order, the domestic industry may have ceased production of like goods or foreign subsidies may have been terminated. An interim review may also be warranted where there are sufficient facts that, although in existence, were not put into evidence during the previous review or inquiry and were not discoverable by the exercise of reasonable diligence at that time.

There were two requests for interim reviews of two findings in the fiscal year.

On February 15, 2000, the Garlic Growers Association of Ontario requested a review of the Tribunal's finding in *Fresh Garlic* (NQ-96-002) to extend the coverage of the finding to a full calendar year, from the period of July 1 to December 31 during which the finding now applies. On June 27, 2000, the

Tribunal decided that, because it did not have the jurisdiction to expand the scope of the finding, an interim review was not warranted (RD-99-002).

On April 15, 2000, Shaw Industries, Inc. (Shaw) filed a request for an interim review of the Tribunal's order in *Machine Tufted Carpeting* (RR-96-004). Shaw was seeking an exclusion for certain carpeting manufactured using the patented Zimmer Chromojet jet dye technology. On August 20, 2000, the Tribunal decided that a review of the order was not warranted (RD-2000-001). The Tribunal found that future domestic production was imminent and well documented and that there was no likelihood of an amendment to the order if an interim review were conducted.

Expiry Reviews

Subsection 76.03(1) of SIMA provides that a finding or order expires after five years, unless an expiry review has been initiated. Not later than 10 months before the expiry date of the order or finding, the Secretary publishes a notice of expiry in the *Canada Gazette*. The notice invites persons and governments to submit their views on whether the order or finding should be reviewed and gives direction on the issues that should be addressed in the submissions. The Tribunal initiates a review of the order or finding, as requested, if it determines that such a review is warranted. It then issues a notice of review and notifies the Commissioner of its decision. The notice of expiry review is published in the *Canada Gazette* and forwarded to all known interested parties.

During the fiscal year, the Tribunal issued three notices of expiry. The Tribunal decided that expiry reviews were warranted in two cases and initiated reviews. In *Certain Stainless Steel Welded Pipe* (LE-2000-03), there was no request for the initiation of an expiry review.

The purpose of an expiry review is to determine whether anti-dumping or countervailing duties remain necessary. There are two phases in an expiry review. The first phase is the investigation by the Commissioner to determine whether there is a likelihood of resumed or continued dumping or subsidizing if the finding or order expires. If the Commissioner determines that such a likelihood exists with respect to any of the goods, the second phase is the Tribunal's inquiry into the likelihood of injury or retardation. If the Commissioner determines that such a likelihood does not exist for any of the goods, the Tribunal does not consider those goods in its subsequent determination of the likelihood of injury and issues an order rescinding the order or finding with respect to those goods.

The Tribunal's procedures in expiry reviews are similar to those in final injury inquiries.

Expiry Reviews Completed in the Fiscal Year

Upon completion of an expiry review, the Tribunal issues an order with reasons, rescinding or continuing a finding or order, with or without amendment. If the Tribunal continues a finding or order, it remains in force for a further five years, unless a review has been initiated and the finding or order is rescinded. If the finding or order is rescinded, imports are no longer subject to anti-dumping or countervailing duties.

In the fiscal year, the Tribunal completed four expiry reviews.

On May 1, 2000, the Tribunal continued its order in *Women's Boots and Women's Shoes* (RR-99-003) respecting dumped imports from China, with an amendment to rescind the portion respecting women's shoes. The Shoe Manufacturers' Association of Canada, representing domestic producers, importers and the Retail Council of Canada participated in the expiry review.

On June 5, 2000, the Tribunal continued its order in *Certain Carbon Steel Welded Pipe* (RR-99-004) respecting dumped imports from Korea. Stelco, IPSCO, Ispat Sidbec and an importer participated in the expiry review.

On September 13, 2000, the Tribunal continued its order in *Whole Potatoes* (RR-99-005) respecting dumped imports into British Columbia from the United States. The B.C. Vegetable Marketing Commission, representing growers, and the Washington State Potato Commission, representing exporters, participated in the expiry review.

On November 3, 2000, the Tribunal continued its orders in *Refined Sugar* (RR-99-006) respecting dumped imports from Denmark, Germany, the Netherlands, the United Kingdom and the United States and subsidized imports from the European Union. The Tribunal made generic certain brand-, producer- or importer-specific exclusions granted in the initial inquiry, and its orders excluded one additional product. The Canadian Sugar Institute, representing domestic producers, the Canadian Sugar Beet Producers' Association Inc., the Canadian Sugar Users Coalition, several food manufacturers and importers, the Commissioner of Competition and the United States Beet Sugar Association participated in the expiry review.

Expiry Reviews in Progress at the End of the Fiscal Year

Two expiry reviews were in progress at the end of the fiscal year. They were reviews of the orders in: (1) *Certain Oil and Gas Well Casing* (RR-2000-001) respecting dumped imports from Korea and the United States; and (2) *Carbon Steel Welded Pipe* (RR-2000-002) respecting dumped imports from Argentina, India, Romania, Chinese Taipei, Thailand, Venezuela and Brazil.

Judicial or Panel Review of SIMA Decisions

Table 3 summarizes the Tribunal's expiry review activities during the fiscal year. Table 4 lists Tribunal findings and orders in force as of March 31, 2001.

Any person affected by Tribunal findings or orders can request judicial review by the Federal Court of Canada on grounds of alleged denial of natural justice and error of fact or law. In cases involving goods from the United States and Mexico, requests may be made for judicial review by the Federal Court of Canada or for a review by a NAFTA binational panel. Table 5 lists the Tribunal's decisions under section 43, 44 or 76 of SIMA that were before the Federal Court of Canada for judicial review or for review by a binational panel in the fiscal year.

During the fiscal year, the Federal Court of Canada affirmed the Tribunal's orders in *Certain Corrosion-resistant Steel Sheet* (RR-98-007). Requests to the Federal Court of Canada for judicial review in *Certain Cold-rolled Steel Sheet* (RR-97-007) were discontinued. At the end of the fiscal year, the Federal Court of Canada had not yet heard applications to review the Tribunal's orders in *Refined Sugar* (RR-99-006).

During the fiscal year, binational panels affirmed the Tribunal's order (United States) in *Certain Copper Pipe Fittings* (RR-97-008) and its order (United States) in *Certain Cold-rolled Steel Sheet* (RR-97-007). At the end of the fiscal year, the proceeding relating to the application to review the Tribunal's finding (United States) in *Iodinated Contrast Media* (NQ-99-003) had been suspended, and a binational panel had not yet heard an application to review the Tribunal's finding (Mexico) in *Carbon Steel Plate* (NQ-97-001) and its findings (United States) in *Certain Refrigerators, Dishwashers and Dryers* (NQ-2000-001).

WTO Dispute Resolution

Governments that are members of the WTO may challenge Tribunal injury findings or orders in dumping and countervailing cases before the WTO dispute settlement bodies. This is initiated by intergovernmental consultations. There are no Tribunal findings or orders before the dispute settlement bodies of the WTO.

TABLE 1**Preliminary Determinations of Injury Issued Under Subsection 37.1(1) of SIMA Between April 1, 2000, and March 31, 2001, and Preliminary Injury Inquiries Under Subsection 34(2) of SIMA in Progress at Year End**

Preliminary Injury Inquiry No.	Product	Country	Date of Determination	Determination
PI-2000-001	Certain Grain Corn	United States	October 10, 2000	Injury
PI-2000-002	Garlic	China and Vietnam	December 29, 2000	Injury
PI-2000-003	Certain Concrete Reinforcing Bar	Indonesia, Japan, Latvia, Moldova, Poland, Chinese Taipei and Ukraine	January 2, 2001	Injury
PI-2000-004	Pulp-dewatering Screw Presses	Norway	January 19, 2001	Inquiry terminated
PI-2000-005	Certain Corrosion-resistant Steel Sheet	China, India, Malaysia, Portugal, Russian Federation, South Africa and Chinese Taipei	February 2, 2001	Injury
PI-2000-006	Certain Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip	Brazil, Bulgaria, China, Chinese Taipei, India, Korea, former Yugoslav Republic of Macedonia, New Zealand, Saudi Arabia, South Africa, Thailand, Ukraine and Yugoslavia	March 20, 2001	Injury
PI-2000-007	Certain Cold-rolled Steel Sheet Products	Brazil, Chinese Taipei, former Yugoslav Republic of Macedonia, Italy, Luxembourg, Malaysia, China, Korea and South Africa		

TABLE 2**Findings Issued Under Section 43 of SIMA Between April 1, 2000, and March 31, 2001, and Inquiries Under Section 42 of SIMA in Progress at Year End**

Inquiry No.	Product	Country	Date of Finding/Decision	Finding/Decision
NQ-99-003	Iodinated Contrast Media	United States (including the Commonwealth of Puerto Rico)	May 1, 2000	Injury
NQ-99-004	Certain Carbon Steel Plate	Brazil, Finland, India, Indonesia, Thailand and Ukraine	June 27, 2000	Injury
NQ-2000-001	Certain Refrigerators, Dishwashers and Dryers	United States	August 1, 2000	Injury
NQ-2000-002	Certain Stainless Steel Round Bar	Brazil and India	October 27, 2000	Injury
NQ-2000-003	Bingo Paper	United States	September 29, 2000	Inquiry suspended
NQ-2000-004	Waterproof Footwear and Bottoms	China	December 8, 2000	Threat of injury
NQ-2000-005	Certain Grain Corn	United States	March 7, 2001	No injury
NQ-2000-006	Garlic	China and Vietnam		
NQ-2000-007	Certain Concrete Reinforcing Bar	Indonesia, Japan, Latvia, Moldova, Poland, Chinese Taipei and Ukraine		
NQ-2000-008	Certain Corrosion-resistant Steel Sheet	China, India, Malaysia, Russian Federation, South Africa and Chinese Taipei		

TABLE 3**Orders Issued Under Section 76 of SIMA Between April 1, 2000, and March 31, 2001,
and Reviews in Progress at Year End**

Review No.	Product	Country	Date of Order	Order
RR-99-003	Women's Boots and Women's Shoes	China	May 1, 2000	Order continued
RR-99-004	Carbon Steel Welded Pipe	Korea	June 5, 2000	Order continued
RR-99-005	Whole Potatoes	United States	September 13, 2000	Order continued
RR-99-006	Refined Sugar	United States, Denmark, Germany, Netherlands, United Kingdom and European Union	November 3, 2000	Finding continued
RR-2000-001	Certain Oil and Gas Well Casing	Korea and United States		
RR-2000-002	Certain Carbon Steel Welded Pipe	Argentina, India, Romania, Chinese Taipei, Thailand, Venezuela and Brazil		

TABLE 4

SIMA Findings and Orders in Force as of March 31, 2001¹

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
RR-95-001	July 5, 1996	Oil and Gas Well Casing	Korea and United States	CIT-15-85 (April 17, 1986) R-7-86 (November 6, 1986) RR-90-005 (June 10, 1991)
RR-95-002	July 25, 1996	Carbon Steel Welded Pipe	Argentina, India, Romania, Chinese Taipei, Thailand, Venezuela and Brazil	NQ-90-005 (July 26, 1991) NQ-91-003 (January 23, 1992)
RR-96-001	September 12, 1996	Stainless Steel Welded Pipe	Chinese Taipei	NQ-91-001 (September 5, 1991)
NQ-96-002	March 21, 1997	Fresh Garlic	China	
NQ-96-003	April 11, 1997	Polyiso Insulation Board	United States	
RR-96-004	April 21, 1997	Machine Tufted Carpeting	United States	NQ-91-006 (April 21, 1992)
NQ-96-004	June 27, 1997	Concrete Panels	United States	
RR-97-001	October 20, 1997	Waterproof Rubber Footwear	China	ADT-2-82 (April 23, 1982) R-7-87 (October 22, 1987) RR-92-001 (October 21, 1992)
NQ-97-001	October 27, 1997	Certain Hot-rolled Carbon Steel Plate	Mexico, China, Republic of South Africa and Russian Federation	
RR-97-002	November 28, 1997	Fresh Iceberg (Head) Lettuce	United States	NQ-92-001 (November 30, 1992)
RR-97-003	December 10, 1997	Bicycles and Frames	Chinese Taipei and China	NQ-92-002 (December 11, 1992)
NQ-97-002	April 29, 1998	Certain Prepared Baby Foods	United States	
NQ-98-001	September 4, 1998	Certain Stainless Steel Round Bar	Germany, France, India, Italy, Japan, Spain, Sweden, Chinese Taipei and United Kingdom	
RR-98-001	November 18, 1998	Preformed Fibreglass Pipe Insulation	United States	NQ-93-002 (November 19, 1993)

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
RR-98-004	May 17, 1999	Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate	Italy, Korea, Spain and Ukraine	NQ-93-004 (May 17, 1994)
NQ-98-003	June 18, 1999	Certain Stainless Steel Round Bar	Korea	
RR-98-005	June 22, 1999	12-gauge Shotshells	Czech Republic and Republic of Hungary	NQ-93-005 (June 22, 1994)
NQ-98-004	July 2, 1999	Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products	France, Romania, Russian Federation and Slovak Republic	
RR-98-006	July 19, 1999	Black Granite Memorials and Black Granite Slabs	India	NQ-93-006 (July 20, 1994)
RR-98-007	July 28, 1999	Certain Corrosion-resistant Steel Sheet Products	Brazil, Germany, Japan, Korea and United States	NQ-93-007 (July 29, 1994)
NQ-99-001	August 27, 1999	Certain Cold-rolled Steel Sheet Products	Belgium, Russian Federation, Slovak Republic and Turkey	
NQ-99-002	January 12, 2000	Certain Concrete Reinforcing Bar	Cuba, Korea and Turkey	
RR-99-002	March 20, 2000	Subsidized Canned Ham	Denmark and Netherlands	GIC-1-84 (August 7, 1984) RR-89-003 (March 16, 1990) RR-94-002 (March 21, 1995)
NQ-99-003	May 1, 2000	Iodinated Contrast Media	United States (including the Commonwealth of Puerto Rico)	
RR-99-003	May 1, 2000	Women's Boots	China	RR-94-003 (May 2, 1995) NQ-89-003 (May 3, 1990)
RR-99-004	June 5, 2000	Carbon Steel Welded Pipe	Korea	RR-94-004 (June 5, 1995) RR-89-008 (June 5, 1990) ADT-6-83 (June 28, 1983)

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
NQ-99-004	June 27, 2000	Certain Carbon Steel Plate	Brazil, Finland, India, Indonesia, Thailand and Ukraine	
NQ-2000-001	August 1, 2000	Certain Refrigerators, Dishwashers and Dryers	United States (WCI and Whirlpool)	
RR-99-005	September 13, 2000	Whole Potatoes	United States	RR-94-007 (September 14, 1995) RR-89-010 (September 14, 1990) CIT-16-85 (April 18, 1986) ADT-4-84 (June 4, 1984)
NQ-2000-002	October 27, 2000	Certain Stainless Steel Round Bar	Brazil and India	
RR-99-006	November 3, 2000	Refined Sugar	United States, Denmark, Germany, Netherlands, United Kingdom and European Union	NQ-95-002 (November 6, 1995)
NQ-2000-004	December 8, 2000	Waterproof Footwear and Bottoms	China	

1. To determine the precise product coverage, refer to the findings or orders as identified in the first column of the table.

TABLE 5

SIMA Cases Before the Federal Court of Canada or a Binational Panel Between April 1, 2000, and March 31, 2001

Case No.	Product	Country of Origin	Forum	Date Filed	File No./ Status
RR-97-007	Certain Cold-rolled Steel Sheet	Germany, France, Italy, United Kingdom and United States	FC	August 27, 1998	A—483—98/ A—484—98/ A—514—98/ A—515—98 Appeals discontinued
			BP	September 1, 1998	CDA-USA-98-1904-02 Decision affirmed
RR-97-008	Certain Copper Pipe Fittings	United States	BP	November 20, 1998	CDA-USA-98-1904-03 Decision affirmed
NQ-97-001	Certain Hot-rolled Carbon Steel Plate	Mexico	BP	July 12, 1999	CDA-MEX-99-1904-01
RR-98-007	Certain Corrosion-resistant Steel Sheet Products	Brazil, Germany, Japan, Korea and United States	FC	September 2, 1999	A—236—99 Appeal dismissed
NQ-99-003	Iodinated Contrast Media	United States (including the Commonwealth of Puerto Rico)	BP	July 12, 2000	CDA-USA-2000-1904-02 Proceeding suspended
NQ-2000-001	Certain Refrigerators, Dishwashers and Dryers	United States	BP	September 22, 2000	CDA-USA-2000-1904-04
RR-99-006	Refined Sugar	United States, Denmark, Germany, Netherlands, United Kingdom and European Union	FC	December 1, 2000	A—746—00

Notes: FC — Federal Court of Canada
BP — Binational Panel

CHAPTER IV

APPEALS

Introduction

The Tribunal hears appeals from decisions of the Commissioner under the *Customs Act* and SIMA or of the Minister of National Revenue (the Minister) under the *Excise Tax Act*. The Tribunal hears appeals relating to the tariff classification and value for duty of goods imported into Canada and relating to the origin of goods imported from the United States, Mexico and Chile under the *Customs Act*. The Tribunal also hears and decides appeals concerning the application, to imported goods, of a Tribunal finding or order concerning dumping or subsidizing and the normal value or export price or subsidy of imported goods under SIMA. Under the *Excise Tax Act*, a person may appeal to the Tribunal the decision of the Minister about an assessment or determination of federal sales tax or excise tax.

The Tribunal strives to be informal and accessible. However, there are certain procedures and time constraints that are imposed by law and by the Tribunal. For example, the appeal process is set in motion with a notice (or letter) of appeal, in writing, sent to the Secretary of the Tribunal within the time limit specified in the act under which the appeal is made.

Rules of Procedure

Under the Rules of Procedure, the person launching the appeal (the appellant) normally has 60 days to submit to the Tribunal a document called a “brief”. Generally, the brief states under which act the appeal is launched, gives a description of the goods in issue and an indication of the points at issue between the appellant and the Minister or Commissioner (the respondent) and states why the appellant believes that the respondent’s decision is incorrect. A copy of the brief must also be given to the respondent.

The respondent must also comply with time and procedural constraints. Normally, within 60 days after having received the appellant’s brief, the respondent must provide the Tribunal and the appellant with a brief setting forth his position. The Secretary of the Tribunal then contacts both parties in order to schedule a hearing. Hearings are generally conducted before Tribunal members in public. The Tribunal publishes a notice of the hearing in the *Canada Gazette* to allow other interested persons to attend. Depending on the complexity and precedential nature of the matter at issue, appeals will be heard by a panel of one or three members. Persons may intervene in an appeal by specifying the nature of their interest in the appeal and by indicating the reason for intervening and how they may assist the Tribunal in the resolution of the appeal.

Hearings

An individual may present a case before the Tribunal in person, or be represented by legal counsel or by any other representative. The respondent is generally represented by counsel from the Department of Justice.

Hearing procedures are designed to ensure that the appellant and the respondent are given a full opportunity to make their case. They also enable the Tribunal to have the best information possible to make a decision. As in a court, the appellant and the respondent can call witnesses, and these witnesses are questioned under oath or affirmation by the opposing parties, as well as by Tribunal members, in order to test the validity of their evidence. When all the evidence is gathered, parties may present arguments in support of their respective position.

The Tribunal, on its own initiative or on the request of the appellant or the respondent, may decide to hold a hearing by way of written submissions. In that case, the Tribunal publishes a notice of the hearing in the *Canada Gazette* to allow other interested persons to participate. In the notice, the Tribunal establishes the manner and timing for filing the submissions and the requirement, if appropriate, for the parties to file an agreed statement of facts.

The Tribunal also hears appeals by way of electronic transmission, either by teleconference or videoconference.

Teleconference hearings are used mainly to dispose of preliminary motions and jurisdictional issues where witnesses are not required to attend or give evidence.

Videoconference hearings are used as an alternative to holding hearings in locations across Canada or requiring parties from outside Ontario or Quebec to present themselves at the Tribunal's premises in Ottawa. The procedures are very similar to hearings held before the Tribunal at its premises. However, the Tribunal requires that written materials, exhibits, aids to argument, etc., be filed with the Tribunal prior to the videoconference hearing.

Usually, within 120 days of the hearing, the Tribunal issues a decision on the matters in dispute, including the reasons for its decision.

If the appellant, the respondent or an intervener disagrees with the Tribunal's decision, the decision can be appealed to the Federal Court of Canada.

Appeals Considered

During the fiscal year, the Tribunal heard 46 appeals of which 25 related to the *Customs Act* and 21 to the *Excise Tax Act*. Decisions were issued in 58 cases, of which 29 were heard during the fiscal year.

Decisions on Appeals

Act	Allowed	Allowed in Part	Dismissed	Total
<i>Customs Act</i>	12	5	19	36
<i>Excise Tax Act</i>	15	-	7	22

Table 1 of this chapter lists the appeal decisions rendered in the fiscal year.

Summary of Selected Decisions

Of the many cases heard by the Tribunal in carrying out its appeal functions, several decisions stand out, either because of the particular nature of the product in issue or because of the legal significance of the case. Brief summaries of a representative sample of such appeals follow, two of which were heard under the *Customs Act* and one under the *Excise Tax Act*. These summaries have been prepared for general information purposes only and have no legal status.

**GFT Mode Canada
v.
DMNR**
AP-96-046 and
AP-96-074

Decision:
Motion dismissed
(May 18, 2000)

This was a preliminary motion in appeals made under subsection 67(1) of the *Customs Act* from redeterminations made by the CCRA in respect of the value for duty of imported goods. In these decisions, the respondent assessed duty on payments made by the appellant to the licensors as “royalties” pursuant to paragraph 48(5)(a) of the *Customs Act*. In his brief, the respondent argued that, in the alternative, a portion of the fees paid pursuant to the sublicense and licence agreements should be added to the price paid or payable as an assist.

In the motion, the appellant requested that the Tribunal strike out the respondent’s brief and that the Tribunal allow the appeals on the basis of the remaining documentation on file. The appellant argued that the respondent’s pleadings did not establish a *prima facie* case. The appellant also argued that the respondent could not, in an appeal before the Tribunal, present grounds for the assessment of duty that were not covered by the respondent’s redetermination.

The Tribunal was of the view that this motion, dealing with the nature of an appeal under section 67 of the *Customs Act*, raised three main issues: (1) whether the Tribunal had jurisdiction to strike out pleadings and decide an appeal on a preliminary motion; (2) whether the Tribunal should consider the respondent’s alternative argument that the payments made by the appellant to the licensors were assists; and (3) whether the Tribunal should strike out the respondent’s pleadings and allow the appeals.

On the first question, the appellant argued that the Tribunal had jurisdiction under subsection 17(2) of the CITT Act and rules 5, 18(1)(f) and 24 of the Rules

of Procedure to consider the motion. As for the respondent, he argued that the Tribunal did not have jurisdiction to hear a preliminary motion to strike out pleadings other than with respect to jurisdictional issues. The Tribunal took the position that section 67 of the *Customs Act* does not give the parties the unrestricted right to a hearing, even when one is unnecessary. In the Tribunal's view, section 67 should not be interpreted to mean that the Tribunal cannot control the procedure by which an appeal is determined. Therefore, the Tribunal was of the view that it had jurisdiction, on a preliminary motion, to strike out pleadings and dismiss an appeal, but would only do so when it was "plain and obvious" or "beyond doubt" that the pleadings disclosed no reasonable cause of action.

With respect to the issue of whether the Tribunal should consider the respondent's alternative argument that the payments made by the appellant to the licensors were assists, the appellant submitted that the respondent could not raise an alternative ground for the assessment of duties, i.e. one that was not part of the respondent's redeterminations pursuant to subsection 63(3) of the *Customs Act*, which forms the basis of these appeals. The appellant argued that the decision of the Supreme Court of Canada in *Continental Bank of Canada v. Canada* (*Continental Bank*), a tax case, applied to decisions of the Tribunal, precluding the respondent from raising new arguments before the Tribunal. The appellant also argued that the Tribunal, on its own initiative, could not come to a decision in a customs appeal that is different from the respondent's redetermination or one that was argued by the appellant. The respondent argued that an appeal pursuant to section 67 of the *Customs Act* is made from the respondent's redetermination or reappraisal, not his reasons for that decision. Whether the payments made by the appellant to the licensors were dutiable as "royalties" or as "assists" constituted the reasons for the decision.

It was the Tribunal's view that, in an appeal, the respondent may argue alternative or new grounds for the value for duty of goods in support of his redetermination which were not part of the reasons for his redetermination. The Tribunal considered that *Continental Bank* did not apply to the circumstances of the present appeals, given that the respondent had, in that case, attempted to raise a new ground in support of his redetermination at the appellate level. The Tribunal, by contrast, is a "court of first instance" where evidence is heard, witnesses are cross-examined and argument is made. Pursuant to section 67 of the *Customs Act*, the Tribunal is given a broad jurisdiction to make "such order, finding or declaration as the nature of the matter may require". Therefore, the Tribunal was of the view that the respondent could raise alternative grounds for his decision. In the Tribunal's view, whether an item is dutiable arises from the application of the provisions of the *Customs Act*, not by virtue of the respondent's redetermination. The Tribunal's objective in hearing an appeal is to apply the valuation sections of the *Customs Act* to the evidentiary record presented at the hearing in order to ascertain the proper value for duty of the goods.

**Western Construction
J-1 Contracting
Penney Construction
S M Construction
Labrador
Construction
RDN Construction
Provincial Paving
Terra Nova Industries
Triple C
Holdings/Penney
Investments
McNamara
Construction
Modern Paving
Pyramid Construction
and Clifford Sheaves
Construction
v.
MNR**

**AP-99-093 to
AP-99-102 and
AP-2000-010 to
AP-2000-012**

**Decision:
Appeals allowed
(November 20, 2000)**

Dealing with the third issue before it, i.e. whether it should strike out the respondent's pleadings and allow the appeals, the Tribunal was of the view that the present case was not one in which it was "plain and obvious" or "beyond doubt" that the pleadings disclosed no reasonable cause of action. This standard had not been met, as the legal principles at issue that concern the "value for duty" under the *Customs Act* had not yet been settled. Further, the factual underpinnings of the case were also in dispute and had not been proven. As such, the Tribunal concluded that a full hearing should be held in this matter.

The motion was dismissed. The Tribunal's decision is currently under appeal.

These were appeals made pursuant to section 81.19 of the *Excise Tax Act* of assessments of the Minister with respect to excise tax imposed on diesel fuel used for heating aggregate rock in the manufacture of asphalt. The appellants carried on business in Newfoundland and conducted, among other things, road construction work using asphalt manufactured or produced by them in portable asphalt drum mixing plants. In this case, the Tribunal had to determine whether the fuel oil that was intended for use and actually used by the appellants to heat aggregate rock in the manufacture of asphalt was "heating oil" within the definition of "diesel fuel" found in subsection 2(1) of the *Excise Tax Act* and, consequently, whether the fuel oil so used was exempt from the excise tax.

The appellants and the respondent provided the Tribunal with an agreed statement of facts with respect to the use of the fuel oil and the manufacturing process. In addition, a senior advisor in fuels and additives at Petro-Canada was qualified as an expert in the petroleum fuel standards used in Canada and testified on the appellants' behalf. The expert witness provided explanations regarding the standards for heating fuel oil (HFO) adopted by one of the Canadian General Standards Board committees, the Committee on Middle Distillate Fuels. He further indicated that the standard for HFO was, in fact, the national standard in Canada and was used without modification by the Government of Canada for its purchases of heating oil. He testified that the standard for HFO specified that type 0 to 6 fuel oils could be used for the generation of heat for both domestic and industrial purposes. When asked to define what was commonly understood by the expression "used for industrial purposes", he testified that it could be any industrial use and gave examples of several types of non-domestic applications, such as in asphalt dryers.

The appellants argued that the standard for HFO was representative of the common understanding of the industry. The appellants also noted that fiscal statutes, such as the *Excise Tax Act*, were no longer to be construed by a strictly literal method and were to be interpreted according to the principles that apply to

all legislation. The respondent submitted that the appellants did not intend to use or did not actually use the fuel oil as heating oil and that, therefore, it was not exempt from the provisions of the *Excise Tax Act*. The respondent urged the Tribunal to follow the Tariff Board's ruling in *Canadian Utilities v. DMNRCE (Canadian Utilities)*, in which it attributed to the term "heating" the meaning of raising the temperature in buildings for human convenience. Furthermore, the respondent submitted that the jurisprudence clearly indicated that a statute must be construed according to the ordinary meaning of the words when the provision is clear and unambiguous, which was the case here. The respondent argued that the term "heating oil" was defined in dictionaries as fuel oil used in domestic heating units or for residential heating.

As there is no definition of the term "heating oil" in the *Excise Tax Act*, the Tribunal had to determine how it was to be interpreted. The Tribunal was of the view that the evidence adduced in these appeals clearly led to the conclusion that the term "heating oil" had to be construed according to the terminology given by people familiar with the petroleum industry. The evidence before the Tribunal was that the HFOs covered by the national standards were intended for use in oil-burning equipment for the generation of heat for domestic and industrial purposes. The Tribunal was also of the view that "industrial purposes" could refer to the heating of aggregate rock in the manufacture of asphalt. The Tribunal was also convinced that this approach fairly reflected the object of the *Excise Tax Act* and the intention of Parliament. In view of the legislative and definitional evolution with respect to the term "heating oil", the Tribunal felt that this case could be distinguished from the *Canadian Utilities* decision. Therefore, the Tribunal found that the fuel oil used by the appellants to heat aggregate rock in the manufacture of asphalt was heating oil and was exempt from excise tax under the *Excise Tax Act*.

**Sharp Electronics of
Canada
v.
DMNR**
AP-98-092

Decision:
Appeal allowed
(7 June 2000)

This was an appeal from a decision of the Deputy Minister of National Revenue made under section 63 of the *Customs Act* regarding the tariff classification of photocopier toner cartridges. The issue in this appeal was whether the toner cartridges imported by the appellant were properly classified in heading No. 37.07 of Schedule I to the *Customs Tariff* as chemical preparations for photographic uses, as determined by the respondent, or should have been classified in heading No. 90.09 as parts and accessories of photocopying apparatus, as claimed by the appellant. The photocopier toner cartridges in issue were temporarily attached to photocopiers in order to transfer toner contained in the cartridge into the toner hopper of photocopiers. The toner was used in the photocopying process to make the image being photocopied visible on plain paper.

The Tribunal heard the expert testimony of a staff member of the Technical Education Department at Sharp Electronics Canada Ltd., who developed instructional courses for the company. Explanations were given regarding the functioning of the toner cartridges, their specific design and their different components. The appellant argued that the toner cartridges were “parts” because they were committed for use with particular types of photocopiers and could remain attached to the photocopiers while in operation. In support of its argument, the appellant referred to two Classification Opinions published by the World Customs Organization (WCO). The appellant argued that these opinions classified two types of toner cartridges, one with moving parts and the other without moving parts, as parts and accessories of photocopying apparatus. The respondent argued, among other things, that the toner cartridges were not parts or accessories, since they were not essential to the photocopying process. With respect to the Classification Opinions of the WCO, it was the respondent’s position that the cartridges in issue were distinct from those mentioned in the Classification Opinions, as they dealt with cartridges with moving parts, while the toner cartridges in issue did not have moving parts.

While heading No. 37.07 would appear to cover the goods in issue, the Tribunal was persuaded that the goods should be classified under tariff item No. 9009.90.90 as parts and accessories of photocopying apparatus. The Tribunal was of the view that the cartridges were attached to specific models of photocopiers and enhanced their effectiveness. The cartridges facilitated the delivery of toner to the photocopier without spillage. Pursuant to Rule 1 of the *General Rules for the Interpretation of the Harmonized System*, the Tribunal concluded that Note 2 to Chapter 90, which states that parts and accessories, if suitable for use solely or principally with a particular kind of machine, are to be classified with the machines, instruments or apparatus of that kind, directed the classification of the goods in issue under tariff item No. 9009.90.90. The Tribunal also relied upon the Classification Opinions presented by the appellant. In the Tribunal’s view, the evidence indicated that the cartridges were classifiable under tariff item No. 9009.90.90 as accessories of photocopying apparatus. For these reasons, the appeal was allowed.

TABLE 1

Appeal Decisions Rendered Under Section 67 of the *Customs Act* and Section 81.19 of the *Excise Tax Act* Between April 1, 2000, and March 31, 2001

Appeal No.	Appellant	Date of Decision	Decision
<i>Customs Act</i>			
AP-99-010	Phosyn plc	April 13, 2000	Allowed
AP-99-061	Sport Dinaco Inc.	May 4, 2000	Allowed
AP-98-102	Calego International Inc.	May 29, 2000	Allowed
AP-98-092	Sharp Electronics of Canada Ltd.	June 7, 2000	Allowed
AP-99-073	Rollins Machinery Ltd.	June 12, 2000	Dismissed
AP-98-093 and AP-98-094	Cast Terminals Inc. and Terminus Racine (Montréal) Ltd.	June 22, 2000	Allowed
AP-99-012	Rittal Systems Ltd.	June 30, 2000	Allowed in part
AP-99-083	Sandvik Tamrock Canada Inc.	June 30, 2000	Dismissed
AP-99-029 and AP-99-046	Sanyo Canada Inc.	July 5, 2000	Dismissed
AP-99-082	Nokia Products Limited	July 26, 2000	Allowed
AP-98-002	Sherson Marketing Corporation	July 27, 2000	Allowed
AP-98-097	Sherson Marketing Corporation	July 27, 2000	Allowed in part
AP-98-098	Sherson Marketing Corporation	July 27, 2000	Allowed in part
AP-98-099	Sherson Marketing Corporation	July 27, 2000	Dismissed
AP-99-042	Pabla Fashions Ltd.	August 30, 2000	Dismissed
AP-99-074	Avon Canada Inc.	August 30, 2000	Dismissed
AP-98-012	EM Plastic & Electric Products Ltd.	August 31, 2000	Allowed
AP-93-058	Metabal Ltd.	September 7, 2000	Allowed in part
AP-93-079	Olympia Tube Ltd.	September 7, 2000	Allowed in part
AP-99-043	Toyota Canada Inc.	September 12, 2000	Dismissed
AP-99-063	GL&V/Black Clawson-Kennedy	September 27, 2000	Allowed
AP-99-014	Patagonia International, Inc.	September 28, 2000	Allowed
AP-99-086	Canadisc Inc.	October 24, 2000	Dismissed
AP-2000-026	Continuous Colour Coat Limited	November 17, 2000	Allowed
AP-99-085	Bio Agri Mix Ltd.	November 28, 2000	Dismissed
AP-99-105	Yamaha Motor Canada Ltd.	December 6, 2000	Dismissed
AP-94-143	Liz Claiborne (Canada) Ltd.	December 12, 2000	Dismissed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-97-133	Chicago Rawhide Products Canada Ltd.	December 21, 2000	Dismissed
AP-99-117	Lexus Products Ltd.	January 11, 2001	Dismissed
AP-2000-015	Costco Canada Inc.	January 11, 2001	Dismissed
AP-2000-017	Intersave West Buying and Merchandising Service	January 16, 2001	Dismissed
AP-99-092	Bauer Nike Hockey Inc.	February 14, 2001	Dismissed
AP-97-138	Atlas Alloys, Division of Rio Algom Limited	February 19, 2001	Dismissed
AP-99-104	Boehringer Mannheim Canada Ltd.	February 22, 2001	Dismissed
Excise Tax Act			
2704	596720 Ontario Limited	July 18, 2000	Allowed
2705	J.J. Taylor & Sons Limited	July 18, 2000	Dismissed
2706	Diesel Equipment Limited	July 18, 2000	Allowed
AP-99-093 to AP-99-102 and AP-2000-010 to AP-2000-012	Western Construction Company Limited, J-1 Contracting Ltd., Penney Construction Limited, S M Construction Company Limited, Labrador Construction Limited, RDN Construction Limited, Provincial Paving Limited, Terra Nova Industries Ltd., Triple C Holdings Ltd./Penney Investments Ltd., McNamara Construction Company, a Division of Tarmac Canada Inc., Modern Paving Limited, Pyramid Construction Limited and Clifford Sheaves Construction Limited	November 20, 2000	Allowed
AP-99-118	Lady Rosedale Inc.	January 9, 2001	Dismissed
AP-99-068 to AP-99-072	Shoppers Drug Mart Inc.	February 26, 2001	Dismissed

TABLE 2

Tribunal Decisions Appealed to the Federal Court of Canada Between April 1, 2000, and March 31, 2001, and Pending as of March 31, 2001¹

Appeal No.	Appellant	Federal Court No.
2983	Les Industries Vogue Ltée	A—419—00
AP-89-153	Mo-Tires Ltd.	T—3288—90
AP-90-076	Kliewer's Cabinets Ltd.	T—1331—91/T—1986—94
AP-90-117	Artec Design Inc.	T—1556—92
AP-90-118	Seine River Cabinets Ltd.	T—1555—92
AP-91-045	Imperial Cabinet (1980) Co. Ltd.	T—1557—92
AP-91-141	The Sheldon L. Kates Design Group Limited	T—2957—94
AP-93-123	W. Ralston (Canada) Inc.	T—2112—95
AP-93-264	Cragg & Cragg Design Group Ltd.	T—2942—94
AP-94-212 and AP-94-213	Chaps Ralph Lauren, A Division of 131384 Canada Inc. and Modes Alto-Regal, Inc.	A—53—98
AP-95-045	Sidewinder Conversions Ltd.	T—314—97
AP-96-056	Informco Inc.	T—2689—97
AP-97-063, AP-97-067, AP-97-077, AP-97-079, AP-97-084, AP-97-085, AP-97-096, AP-97-103, AP-97-115 and AP-97-136	AYP (Canada) Inc.	A—57—00
AP-97-137	Asea Brown Boveri Inc.	A—171—00
AP-98-047	N.C. Cameron & Sons Ltd.	A—341—00
AP-98-085	Utex Corporation	A—28—00
AP-99-014	Patagonia International Inc.	A—820—00
AP-99-029 and AP-99-046	Sanyo Canada Inc.	A—605—00
AP-99-063	GL&V/Black Clawson-Kennedy	A—306—00
AP-99-083	Sandvik Tamrock Canada Inc. and Secoroc, A Division of Atlas Copco Canada Inc.	A—550—00
AP-99-105	Yamaha Motor Canada Ltd.	A—001—01

1. The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not participate in appeals to the Federal Court of Canada, it is unable to confirm that the list contains all Tribunal decisions appealed to the Federal Court of Canada between April 1, 2000, and March 31, 2001.

TABLE 3**Appeal Decisions of the Federal Court of Canada Rendered Between April 1, 2000, and March 31, 2001¹**

Appeal No.	Appellant	Federal Court No.	Decision	Date
2983	Les Industries Vogue Ltée.	T—1270—92	Allowed	May 19, 2000
AP-91-201	152633 Canada Inc./Sako Auto Leasing	T—1686—93	Discontinued	November 15, 2000
AP-93-274 and AP-93-294	Continuous Colour Coat Limited	T—2831—94	Allowed	June 5, 2000
AP-93-294	Continuous Colour Coat Limited	A—854—97	Allowed in part	May 3, 2000
AP-95-230	Euro-Line Appliances	A—323—97	Dismissed	May 17, 2000
AP-95-261 and AP-95-263	Charley Originals Ltd., Division of Algo Group Inc. and Mr. Jump Inc., Division of Algo Group Inc.	A—528—97	Dismissed	May 19, 2000
AP-96-117	Yves Ponroy Canada	A—97—98	Dismissed	July 24, 2000
AP-96-208 and AP-97-009	Philips Electronics Ltd.	A—230—98	Dismissed	May 16, 2000
AP-97-002 and AP-97-058	Flora Manufacturing & Distributing Ltd.	A—633—98 and A—617—98	Dismissed	July 24, 2000
AP-97-010	Hilary's Distribution Ltd.	A—632—98	Dismissed	July 24, 2000
AP-97-029	Entrelec Inc.	A—755—98	Allowed	September 14, 2000
AP-97-052	Flora Manufacturing & Distributing Ltd.	A—720—98	Dismissed	July 24, 2000
AP-97-100	Brother International Corporation (Canada) Ltd.	A—81—99	Dismissed	September 27, 2000
AP-98-007 and AP-98-010	Richards Packaging Inc. and Duopac Packaging Inc.	A—262—99	Dismissed	November 29, 2000

1. The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not participate in appeals to the Federal Court of Canada, it is unable to confirm that the list contains all appeals that were decided between April 1, 2000, and March 31, 2001.

CHAPTER V

ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES

Introduction

The CIIT Act contains broad provisions under which the government or the Minister of Finance may ask the Tribunal to conduct an inquiry on any economic, trade, tariff or commercial matter. In an inquiry, the Tribunal acts in an advisory capacity, with powers to conduct research, receive submissions and representations, find facts, hold public hearings and report, with recommendations as required, to the government or the Minister of Finance.

Textile Reference

Pursuant to a reference from the Minister of Finance dated July 6, 1994, as amended on March 20 and July 24, 1996, on November 26, 1997, and on August 19, 1999, the Tribunal was directed to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister of Finance.

Scope of the Reference

A domestic producer may apply for tariff relief on an imported textile input used, or proposed to be used, in its manufacturing operations. The textile inputs on which tariff relief may be requested are the fibres, yarns and fabrics of Chapters 51, 52, 53, 54, 55, 56, 58, 59 and 60; certain monofilaments or strips and textile and plastic combinations of Chapter 39; rubber thread and textile and rubber combinations of Chapter 40; and products of textile glass fibres of Chapter 70 of the schedule to the *Customs Tariff*. Since July 24, 1996, and at least until July 1, 2002, the following yarns are not included in the textile reference:

Knitting yarns, solely of cotton or solely of cotton and polyester staple fibres, measuring more than 190 decitex, of Chapter 52 or subheading No. 5509.53 other than those used to make sweaters, having a horizontal self-starting finished edge and the outer surfaces of which are constructed essentially with 9 or fewer stitches per 2 centimetres (12 or fewer stitches per inch) measured in the horizontal direction.

Types of Relief Available

The tariff relief that may be recommended by the Tribunal to the Minister of Finance ranges from the removal or reduction of tariffs on one or several, partial or complete, tariff lines, textile- and/or end-use-specific tariff provisions. In the case of requests for tariff relief on textile inputs used in the manufacture of

	<p>women's swimsuits, co-ordinated beachwear and co-ordinated accessories only, the recommendation could include company-specific relief. The recommendation could be for tariff relief for either a specific or an indeterminate period of time. However, the Tribunal will only recommend tariff relief that is administrable on a cost-effective basis.</p>
Process	<p>Domestic producers seeking tariff relief must file a request with the Tribunal. Producers must file with the request either samples of the textile input for which tariff relief is being sought or a National Customs Ruling from the CCRA covering the input. If the Tribunal determines that the request is properly documented, it will conduct an investigation to determine if it should recommend tariff relief.</p>
Filing and Notification of a Request	<p>Upon receipt of a request for tariff relief, and before commencement of an investigation, the Tribunal issues a brief electronic notice on its Web site announcing the request. The minimum period of time for the notification of a request before an investigation is commenced is 30 days.</p> <p>This notification is designed to increase transparency, identify potential deficiencies in the request, avoid unnecessary investigations, provide an opportunity for the domestic textile industry to contact the requester and agree on a reasonable domestic source of supply, inform other users of identical or substitutable textile inputs, prepare the domestic industry to respond to subsequent investigation questionnaires and give associations advance time for planning and consultation with their members.</p>
Investigations	<p>When the Tribunal is satisfied that a request is properly documented, it commences an investigation. A notice of commencement of investigation is sent to the requester, all known interested parties and any appropriate government department or agency, such as the Department of Foreign Affairs and International Trade, the Department of Industry, the Department of Finance and the CCRA. The notice is also published in the <i>Canada Gazette</i>.</p> <p>In any investigation, interested parties include domestic producers, certain associations and other persons who are entitled to be heard by the Tribunal because their rights or pecuniary interests may be affected by the Tribunal's recommendations. Interested parties are given notice of the request and can participate in the investigation. Interested parties include competitors of the requester, suppliers of goods that are identical to or substitutable for the textile input and downstream users of goods produced from the textile input.</p>

**Recommendations to
the Minister**

To prepare a staff investigation report, the Tribunal staff gathers information through such means as plant visits and questionnaires. Information is obtained from the requester and interested parties, such as a domestic supplier of the textile input, for the purpose of providing a basis for determining whether the tariff relief sought will maximize net economic gains for Canada.

In normal circumstances, a public hearing is not required, and the Tribunal will dispose of the matter on the basis of the full written record, including the request, the staff investigation report and all submissions and evidence filed with the Tribunal.

The procedures for the conduct of the Tribunal's investigation envisage the full participation of the requester and all interested parties. A party, other than the requester, may file submissions, including evidence, in response to the properly documented request, the staff investigation report and any information provided by a government department or agency. The requester may subsequently file submissions with the Tribunal in response to the staff investigation report and any information provided by a government department or agency or other party.

Where confidential information is provided to the Tribunal, such information falls within the protection of the CITT Act. Only independent counsel who have filed declarations and confidentiality undertakings may have access to such confidential information.

The Tribunal will normally issue its recommendations, with reasons, to the Minister of Finance within 120 days from the date of commencement of the investigation. In exceptional cases, where the Tribunal determines that critical circumstances exist, the Tribunal will issue its recommendations within an earlier specified time frame that the Tribunal determines to be appropriate. The Tribunal will recommend the reduction or removal of customs duties on a textile input where it will maximize net economic gains for Canada.

Request for Review

Where the Minister of Finance has made an order for tariff relief pursuant to a recommendation of the Tribunal, certain domestic producers may make a request to the Tribunal to commence an investigation for the purpose of recommending the renewal, amendment or termination of the order. A request for the amendment or termination of the order should specify what changed circumstances justify such a request.

Review on Expiry

Where the Minister of Finance has made an order for tariff relief subject to a scheduled expiry date, the Tribunal will, before the expiry date, issue a formal

notice that the tariff relief provided by the order will expire unless the Tribunal issues a recommendation that tariff relief should be continued and the Minister of Finance implements the recommendation. The notice invites interested parties to file submissions for or against continuation of tariff relief.

If no opposition to the continuation of tariff relief is received, upon receipt of submissions and information supporting the request for continuation of tariff relief, the Tribunal may decide to recommend the continuation of tariff relief. Conversely, if no request for continuation of tariff relief is submitted, the Tribunal may decide to recommend the termination of tariff relief. If it appears that a more complete review is warranted, the Tribunal will conduct an investigation to consider whether all relevant factors that led it to recommend tariff relief continue to apply and whether extending tariff relief under such conditions would continue to provide net economic gains for Canada.

Annual Status Report

In accordance with the terms of reference received by the Tribunal directing it to conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their manufacturing operations, the Tribunal provided the Minister of Finance, on January 31, 2001, with its sixth annual status report on the investigation process. The status report covered the period from October 1, 1999, to September 30, 2000.

Recommendations Submitted During the Fiscal Year

During the fiscal year, the Tribunal issued 8 reports to the Minister of Finance, which related to 8 requests for tariff relief. In addition, the Tribunal issued 1 report further to a reconsideration of a recommendation issued previously by the Tribunal. At year end, 4 requests were outstanding, of which an investigation had been commenced in respect of 1 request. Table 1 at the end of this chapter summarizes these activities.

Recommendations in Place

By the end of the fiscal year, the Government had implemented 75 recommendations by the Tribunal, of which 68 are still subject to tariff relief orders. Table 3 provides a summary of recommendations currently implemented.

The implementation of Tribunal recommendations is made by adding new tariff items to the *Customs Tariff*. During the fiscal year, these tariff items covered imports worth \$170 million (estimated) and provided tariff relief worth \$23 million (estimated), the latter amount representing an increase of 10 percent over 1999-2000.

A summary of a representative sample of Tribunal recommendations issued during the fiscal year follows.

Peerless Clothing

TR-99-004

*Recommendation:
Indeterminate tariff relief
(July 28, 2000)*

The Tribunal recommended to the Minister of Finance that tariff relief be granted for an indeterminate period of time on importations of: (1) woven fabrics, solely of combed wool with average fibre diameters of 17.5 microns or less and of combed fine animal hair, measuring 100 decitex or less per single yarn, containing not less than 7 percent by weight of fine animal hair, as certified by the exporter, of a weight of 140 g/m² or more but not exceeding 300 g/m², of subheading No. 5112.11 or 5112.19, for use in the manufacture of men's suits, suit-type jackets, blazers, vests (waistcoats) and trousers; and (2) woven fabrics, solely of combed wool and of combed fine animal hair, containing not less than 15 percent by weight of fine animal hair, as certified by the exporter, of a weight of 140 g/m² or more but not exceeding 300 g/m², of subheading No. 5112.11 or 5112.19, for use in the manufacture of men's sports jackets.

In its report, the Tribunal noted that Peerless's ability to source wool/fine animal hair fabrics offshore had contributed to the enormous success of suits made from lightweight and year-round fabrics. The Tribunal further noted that Cleyn & Tinker, a domestic manufacturer of worsted fabrics was not in the niche market of the very fine wool/fine animal hair blends, but rather in the broader market of wool fabrics. This led the Tribunal to believe that Cleyn & Tinker was not now, nor would it be in the foreseeable future, in a position to produce and supply, in commercial quantities, the very fine wool/fine animal hair fabrics required by Peerless, and that tariff relief for these fabrics would provide net economic gains to Canada. Turning to sports jackets, the Tribunal noted that the fabrics for this end use are generally made from coarser yarns and that the content of fine animal hair is usually higher than that for suit fabrics. While it noted that Cleyn & Tinker had some jacket fabrics containing 10 to 20 percent fine animal hair that were in production or under development, the Tribunal was of the view that these fabrics represented a very small portion of Cleyn & Tinker's overall activity and were only available in a limited range of patterns and colours. Consequently, the Tribunal recommended that tariff relief be provided for this type of fabric as it would provide net economic gains to Canada, but applied a 15 percent threshold with regard to the minimum percentage of fine animal hair that these fabrics should contain.

Coloridé

TR-99-006

*Recommendation:
Indeterminate tariff relief
(July 27, 2000)*

The Tribunal recommended to the Minister of Finance that tariff relief be granted for an indeterminate period of time on importations of single filament yarn, solely of nylon, of subheading No. 5402.41, for use in the manufacture of hair colour charts.

The Tribunal noted that, based on the information on file, it appeared unlikely that Plastifil, a domestic producer, could, in the foreseeable future, sell a given volume of yarn to Coloridé, even if the customs duty were to remain in

effect. Moreover, the Tribunal noted that, to make its extrusion line more profitable, Plastifil seemed more interested in exploiting other markets, such as fishing yarn and sewing thread. Consequently, the Tribunal was of the view that the limited costs that the domestic industry may eventually incur as a result of this tariff relief would be more than offset by future gains for Coloridé.

JMJ Fashions

TR-99-008

*Recommendation:
Indeterminate tariff relief
(October 27, 2000)*

The Tribunal recommended to the Minister of Finance that tariff relief be granted for an indeterminate period of time on importations of woven fabric, having a 3/2 right hand twill weave with a steep twill line of approximately 63 degrees, dyed, solely of single non-textured polyester filaments, with a twist exceeding 1,250 turns per metre in the warp and the weft, having "S" twist yarns in the warp and two "S" twist yarns followed by two "Z" twist yarns alternating in the weft, of a weight not exceeding 250 g/m², of subheading No. 5407.61, for use in the manufacture of women's blouses, jackets, pants, skirts and dresses.

The Tribunal saw little cost in the requested tariff relief being granted, as it did not view the fabrics currently produced domestically by Consoltex as being substitutable for the subject fabric. With regard to the fabric that was under development by Consoltex, the Tribunal noted that Consoltex's ability to supply and market acceptance had not, as yet, been demonstrated. Accordingly, the Tribunal could not attribute any costs that might be incurred by Consoltex, and concluded that tariff relief would provide a yearly benefit to MJM of more than \$150,000.

TABLE 1**Disposition of Requests for Tariff Relief Between April 1, 2000, and March 31, 2001**

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-99-004	Peerless Clothing Inc.	Fabric	July 28, 2000	Indeterminate tariff relief
TR-99-005	Distex Inc.	Fabric	April 4, 2000	Indeterminate tariff relief
TR-99-006	Coloridé Inc.	Yarn	July 27, 2000	Indeterminate tariff relief
TR-99-007	Soltex Textiles Canada Inc.	Nonwoven	July 25, 2000	File closed
TR-99-008	JMJ Fashions Inc.	Fabric	October 27, 2000	Indeterminate tariff relief
TR-2000-001	Peerless Clothing Inc.	Fabric	January 24, 2001	Indeterminate tariff relief
TR-2000-002	Majestic Industries (Canada) Ltd.	Fabric	January 12, 2001	Indeterminate tariff relief
TR-2000-003	Tantalum Mining Corporation of Canada Limited	Fabric	March 21, 2001	Indeterminate tariff relief
TR-2000-004	Ballin Inc.	Fabric	March 9, 2001	Indeterminate tariff relief
TR-2000-005	Peerless Clothing Inc.	Fabric	In progress	
TR-2000-006	Doubletex	Fabric	Not yet initiated	
TR-2000-007	Scapa Tapes North America Ltd.	Fabric	Not yet initiated	
TR-2000-008	Scapa Tapes North America Ltd.	Fabric	Not yet initiated	

TABLE 2

Disposition of a Request for Reconsideration Between April 1, 2000, and March 31, 2001

Request No.	Request for Reconsideration by	Textile Input	Date of Disposition	Recommendation
TR-99-003A	Doubletex	Fabric	October 6, 2000	Recommendation of February 4, 2000 (TR-99-003) reaffirmed

TABLE 3

Tariff Relief Recommendations in Place

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-94-001		Canatex Industries (Division of Richelieu Knitting Inc.)	5402.41.12	Indeterminate
TR-94-004		Woods Canada Limited	5208.52.10	Indeterminate
TR-94-010		Palliser Furniture Ltd.	5806.20.10	Indeterminate
TR-94-012		Peerless Clothing Inc.	5309.29.20	Indeterminate
TR-94-013 and TR-94-016		MMVG Apparel Corp.	5208.42.20 5208.43.20 5208.49.20 5513.31.10 5513.32.10 5513.33.10	Indeterminate
TR-94-017 and TR-94-018		Elite Counter & Supplies	9943.00.00	Indeterminate
TR-95-003		Landes Canada Inc.	5603.11.20 5603.12.20 5603.13.20 5603.14.20 5603.91.20 5603.92.20 5603.93.20 5603.94.20	Indeterminate
TR-95-004		Lingerie Bright Sleepwear (1991) Inc.	5208.12.20 5208.52.20	Indeterminate
TR-95-005		Lingerie Bright Sleepwear (1991) Inc.	5513.11.10 5513.41.10	Indeterminate
TR-95-009		Peerless Clothing Inc.	5408.21.10 5408.21.20 5408.22.21 5408.22.30	Indeterminate
TR-95-010 and TR-95-034		Freed & Freed International Ltd. and Fen-nelli Fashions Inc.	5111.19.10 5111.19.20	Indeterminate
TR-95-011		Louben Sportswear Inc.	5408.31.10 5408.32.20	Indeterminate
TR-95-012		Perfect Dyeing Canada Inc.	5509.32.10	Indeterminate

Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-95-013A		Doubletex	5208.11.30 5208.12.40 5208.13.20 5208.19.30 5208.21.40 5208.22.20 5208.23.10 5208.29.20 5209.11.30 5209.12.20 5209.19.30 5209.21.20 5209.22.10 5209.29.20	Indeterminate
TR-95-036		Canadian Mill Supply Co. Ltd.	5208.21.20	Indeterminate
TR-95-037		Paris Star Knitting Mills Inc.	5408.24.11 5408.24.91 5408.34.10 5516.14.10 5516.24.10	Indeterminate
TR-95-051		Camp Mate Limited	5407.41.10 5407.42.10 5407.42.20 5903.20.22	Indeterminate
TR-95-053 and TR-95-059		Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	5802.11.10 5802.19.10 5802.19.20	Indeterminate
TR-95-056		Sealy Canada Ltd.	3921.19.10 5407.69.10 5407.73.10 5407.94.10 5516.23.10 5903.90.21 6002.43.20	Indeterminate
TR-95-057 and TR-95-058		Doubletex	5407.51.10 5407.61.92 5407.69.10 5515.11.10 5516.21.10 5516.91.10	Indeterminate
TR-95-060		Triple M Fiberglass Mfg. Ltd.	7019.59.10	Indeterminate
TR-95-061		Camp Mate Limited	6002.43.30	Indeterminate
TR-95-064 and TR-95-065		Lady Americana Sleep Products Inc. and el ran Furniture Ltd.	6002.43.60	Indeterminate

Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-96-003		Venture III Industries Inc.	5407.61.92	Indeterminate
TR-96-004		Acton International Inc.	5906.99.21	Indeterminate
TR-96-006		Alpine Joe Sportswear Ltd.	P.C. 1998-1118	Six year s
TR-96-008 and TR-96-010 to TR-96-013		Les Collections Shan Inc.	P.C. 1997-1668	Five year st
TR-97-001		Jones Apparel Group Canada Inc.	5407.91.10 5407.92.20 5407.93.10 5408.21.30 5408.22.40 5408.23.20 5408.31.30 5408.32.40 5408.33.10	Indeterminate
TR-97-002 and TR-97-003		Universal Manufacturing Inc.	5208.43.30 5513.41.20	Indeterminate
TR-97-006		Peerless Clothing Inc.	5407.51.30 5903.90.22 5903.90.23 5903.90.24 6002.43.40 6002.43.50	Indeterminate
TR-97-004, TR-97-007, TR-97-008 and TR-97-010		Blue Bird Dress of Toronto Ltd.	5407.51.20 5407.52.20 5407.61.94 5407.69.20	Indeterminate
TR-97-011		Australian Outback Collection (Canada) Ltd.	5209.31.20 5907.00.16	Indeterminate
TR-97-012		Ballin Inc.	5407.93.30 5516.23.20	Indeterminate
TR-97-014		Lenrod Industries Ltd.	5603.93.40	Indeterminate
TR-97-015, TR-97-016 and TR-97-020		Helly Hansen Canada Ltd.	5903.20.24	Indeterminate
TR-98-001		Cambridge Industries	5608.19.20	Indeterminate
TR-98-002		Distex Inc.	6002.92.20	Indeterminate

Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-98-004, TR-98-005 and TR-98-006		Ladcal Investments Ltd., O/A Pintar Manufacturing Nour Trading House and T.S. Simms and Company Limited	5806.10.20	Indeterminate
TR-98-007		Caulfeild Apparel Group Ltd.	5208.43.30	Indeterminate
TR-98-016		Peerless Clothing Inc.	5407.93.20	Indeterminate
TR-98-017		Jones Apparel Group Canada Inc.	5408.32.50 5408.33.20 5408.34.20	Indeterminate
TR-98-019		Tribal Sportswear Inc.	5209.12.30 5209.22.20 5209.32.10	Indeterminate
TR-99-002		Albany International Canada Inc.	5404.10.20	Indeterminate
TR-99-004		Peerless Clothing Inc.	5112.11.20 5112.11.30 5112.19.20 5112.19.30	Indeterminate
TR-99-006		Coloridé Inc.	5402.41.15	Indeterminate
TA-98-001	TE-97-004 (TR-95-009)	Certain dyed woven fabrics of rayon and polyester	5408.31.20 5408.32.30	Indeterminate
TA-98-002	TE-97-003 (TR-94-009)	Vinex FR-9B fabric	5512.99.10	Indeterminate
TA-98-003	TE-98-001 (TR-95-014)	Woven cut warp pile fabrics	5801.35.10	Indeterminate

Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TA-98-004	TE-98-002 (TR-94-002 and TR-94-002A)	Certain ring-spun yarns	5205.14.20	Three years
			5205.15.20	
			5205.24.20	
			5205.26.20	
			5205.27.20	
			5205.28.20	
			5205.35.20	
			5205.46.20	
			5205.47.20	
			5205.48.20	
			5206.14.10	
			5206.15.10	
			5206.24.10	
			5206.25.10	
			5509.53.10	
			5509.53.20	
			5509.53.30	
			5509.53.40	

CHAPTER VI

PROCUREMENT REVIEW

Introduction

Suppliers may challenge federal government procurement decisions that they believe have not been made in accordance with the requirements of the following: Chapter Ten of NAFTA, Chapter Five of the AIT, the AGP, or the *Agreement on the Procurement of Telecommunications Equipment*. The bid challenge portions of these agreements came into force on January 1, 1994, July 1, 1995, January 1, 1996, and November 1, 2000, respectively.

Any potential suppliers who believe that they may have been unfairly treated during the solicitation or evaluation of bids, or in the awarding of contracts on a designated procurement, may lodge a formal complaint with the Tribunal. A potential supplier with an objection is encouraged to resolve the issue first with the government institution responsible for the procurement. When this process is not successful or a supplier wants to deal directly with the Tribunal, the complainant may ask the Tribunal to consider the case by filing a complaint within the prescribed time limit.

When the Tribunal receives a complaint, it reviews the submission against the criteria for filing. If there are deficiencies, the complainant is given an opportunity to correct these within a specified time limit. If the Tribunal decides to conduct an inquiry, the government institution and all other interested parties are sent a formal notification of the complaint. An official notice of the complaint is also published in *Government Business Opportunities* and the *Canada Gazette*. If the contract in question has not been awarded, the Tribunal may order the government institution to postpone awarding any contract pending the disposition of the complaint by the Tribunal, unless the government institution certifies that the procurement is urgent or that the delay would be against the public interest.

After receipt of its copy of the complaint, the government institution responsible for the procurement files a Government Institution Report (GIR) responding to the allegations. The complainant is then sent a copy of the GIR and has seven days to submit comments. These are forwarded to the government institution and any interveners.

A staff investigation, which can include interviewing individuals and examining files and documents, may be conducted and result in the production of a Staff Investigation Report. This report is circulated to the parties for their comments. Once this phase of the inquiry is completed, the Tribunal reviews the information collected and decides whether a hearing should be held.

The Tribunal then makes a determination, which may consist of recommendations to the government institution (such as retendering, re-evaluating or providing compensation) and the award of reasonable costs to a prevailing complainant for filing and proceeding with the bid challenge and/or costs for preparing the bid. The government institution, as well as all other parties and interested persons, is notified of the Tribunal's decision. Recommendations made by the Tribunal in its determination are to be implemented to the greatest extent possible.

Summary of Procurement Review Activities

	1999-2000	2000-2001
CASES RESOLVED BY THE PARTIES		
Resolved Between Parties	-	-
Withdrawn	4	5
Abandoned While Filing	-	1
Subtotal	4	6
INQUIRIES NOT INITIATED OR CONTINUED ON PROCEDURAL GROUNDS		
Lack of Jurisdiction	6	6
Late Filing	9	8
No Valid Basis	13	17
Subtotal	28	31
CASES DETERMINED ON MERIT		
Complaint Not Valid	13	15
Complaint Valid	14	13
Subtotal	27	28
IN PROGRESS	9	22
TOTAL	68	87

Summary of Selected Determinations

During the fiscal year, the Tribunal issued 28 written determinations of its findings and recommendations, which related to 28 procurement complaints. In 13 of the 28 written determinations, the complaints were determined to be valid or valid in part. In these cases, various remedies were granted in the form of cost awards or recommendations. Twenty-two other cases were in progress at year end. Table 1 at the end of this chapter summarizes these activities.

Of the cases heard by the Tribunal in carrying out its procurement review functions, certain decisions stand out because of the legal significance of the cases. Brief summaries of a representative sample of such cases have been prepared for general information purposes only and have no legal status.

<p>TELUS Integrated Communications</p> <p><i>PR-2000-017 and PR-2000-035</i></p> <p><i>Determination: Complaints valid in part (November 2, 2000)</i></p>	<p>The Tribunal made a determination with respect to two complaints filed by TELUS Integrated Communications Inc. (TELUS) concerning a solicitation by the Correctional Service of Canada (CSC). The solicitation was for the installation and operation, at each correctional facility in Canada, of telephone equipment and software and the associated telephone service (Inmate Telephone System).</p> <p>TELUS alleged that: (1) contrary to a provision of the AIT, the CSC selected a supplier whose proposal was not compliant with the mandatory requirements stipulated in the Request for Proposal (RFP); (2) the RFP did not clearly identify the requirements of the procurement and the criteria to be used in the evaluation of bids and the methods of weighting and evaluating the criteria; and (3) the procurement discriminated among potential suppliers, in that not all potential suppliers had access to certain critical information concerning the CSC's requirements.</p> <p>Having examined the evidence and arguments presented by the parties and considered the subject matter of the complaint, the Tribunal determined that the complaints were valid in part. The Tribunal recommended that the CSC award the contract to TELUS, the only compliant bidder in response to this solicitation.</p>
<p>K-Lor Contractors Services</p> <p><i>PR-2000-023</i></p> <p><i>Determination: Complaint not valid (November 23, 2000)</i></p>	<p>The Tribunal made a determination with respect to a complaint filed by K-Lor Contractors Services Ltd. (K-Lor) concerning a solicitation of the Department of Public Works and Government Services (the Department) for the provision of services for the construction of a secure landfill site in Argientia, Newfoundland.</p> <p>K-Lor alleged that, contrary to the AIT, the Department improperly rejected its tender for failing to provide the required "Certification of Mandatory Site Visit", which, K-Lor claims, it did include in its bid documents.</p> <p>After consideration, the Tribunal determined that the Department did not act contrary to the AIT when it declared K-Lor's bid non-responsive. Therefore, the Tribunal determined that the complaint was not valid.</p>
<p>AT&T Canada</p> <p><i>PR-2000-024</i></p> <p><i>Determination: Complaint valid (November 27, 2000)</i></p>	<p>The Tribunal made a determination with respect to a complaint filed by AT&T Canada Corp. (AT&T) concerning a solicitation of the Department on behalf of the Department of Industry. The solicitation was for the provision of asynchronous transfer mode services.</p> <p>AT&T alleged that, contrary to the provisions of NAFTA, the AIT and the AGP, the Department failed to apply the tendering procedures in a non-discriminatory manner. In its analysis, the Tribunal emphasized that the</p>

purpose of Chapter Five of the AIT is to establish a framework that will ensure equal access to procurement for all Canadian suppliers. The Tribunal determined that discrimination against suppliers is contrary to the AIT, even if the discrimination is not made on the basis of province or region. The Tribunal did not determine whether NAFTA and the AGP were applicable to the procurement in issue.

Having examined the evidence and arguments presented by the parties and considered the subject matter of the complaint, the Tribunal found that certain provisions of the RFP, adding costs to the price of the non-incumbent bidders' proposals, were discriminatory in their effects. Therefore, the Tribunal determined that the AIT had been breached and that the complaint was valid. The Tribunal recommended that the Department, in evaluating the proposals received in response to this solicitation and in identifying a successful bidder to be recommended for contract award, eliminate the effects of the costs that were identified as being contrary to the AIT.

E.H. Industries

PR-2000-026

*Inquiry not initiated/
No reasonable
indication of a breach
(October 30, 2000)*

The Tribunal made a decision with respect to a complaint filed by E.H. Industries Limited (EHI) concerning a solicitation of the Department on behalf of the Department of National Defence. The solicitation is for the provision of 28 basic vehicles, related ship alterations and long-term in-service support to replace the current CH124 Sea King helicopters.

EHI alleged that the Department discriminated against it and its helicopter, the Cormorant, by choosing a "lowest priced compliant" selection criterion and by failing to take into account the additional costs of operating two separate fleets of different helicopters.

Having examined the evidence contained in the complaint, the Tribunal decided not to initiate an inquiry into this complaint because the complaint did not disclose a reasonable indication that the Department had acted contrary to the AIT. The AIT does not require that the government use a certain type of selection method and nothing in the AIT requires the government to purchase a particular type or brand of product simply because it already owns some of that product or brand. In addition, the procurement was at the "letter of interest" stage and, therefore, the final specifications and selection criteria had not yet been set.

**Judicial Review of
Procurement
Decisions**

Table 2 lists the procurement decisions that were appealed to or decided by the Federal Court of Canada during the fiscal year.

TABLE 1**Disposition of Procurement Complaints Between April 1, 2000, and March 31, 2001**

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-99-036	Unisource Technology	December 8, 1999	Decision issued April 5, 2000 Complaint not valid
PR-99-037	Educom Training Systems Inc.	December 16, 1999	Decision issued May 3, 2000 Complaint not valid
PR-99-040	Brent Moore & Associates	December 20, 1999	Decision issued May 4, 2000 Complaint not valid
PR-99-043	Navatar	January 7, 2000	Decision issued May 30, 2000 Complaint not valid
PR-99-044	Navatar	January 10, 2000	Decision issued May 30, 2000 Complaint valid
PR-99-049	Telus Communications	February 25, 2000	Complaint withdrawn
PR-99-050	StorageTek Canada Inc.	February 28, 2000	Decision issued May 29, 2000 Complaint valid
PR-99-051	ACE/ClearDefense Inc.	March 8, 2000	Decision issued June 30, 2000 Complaint valid
PR-99-053	Rolls-Royce Industries Canada Inc.	March 22, 2000	Decision issued August 4, 2000 Complaint valid
PR-2000-001	APS-Antian Professional Services	April 7, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-002	FirstMark Technologies Ltd.	April 18, 2000	Not accepted for inquiry/Not a designated entity
PR-2000-003	Canadian Computer Rentals	April 18, 2000	Decision issued August 3, 2000 Complaint valid
PR-2000-004	Kildonan Associates Inc.	April 25, 2000	Decision issued July 20, 2000 Complaint not valid
PR-2000-005	Radiant Point Inc.	April 27, 2000	Decision issued September 11, 2000 Complaint valid in part
PR-2000-006	Arp Services	May 11, 2000	Not accepted for inquiry/Not a designated contract
PR-2000-007	FMD International Inc.	May 18, 2000	Decision issued August 22, 2000 Complaint not valid
PR-2000-008	Brookfield LePage Johnson Controls Facility Management Services	May 25, 2000	Decision issued September 6, 2000 Complaint valid
PR-2000-009	Crain-Drummond Inc.	May 29, 2000	Decision issued August 18, 2000 Complaint not valid
PR-2000-010	Thomson-CSF Systems Canada Inc.	May 30, 2000	Decision issued October 12, 2000 Complaint not valid

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-2000-011	Western Star Trucks Inc.	May 31, 2000	Decision issued September 11, 2000 Complaint not valid
PR-2000-012	Sirius Consulting Group Inc.	June 13, 2000	Abandoned while filing
PR-2000-013	Valley Associates Inc.	June 13, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-014	Via Safe	June 14, 2000	Not accepted for inquiry/Not a designated contract
PR-2000-015	Trans-Cycle Industries Inc.	June 14, 2000	Complaint withdrawn
PR-2000-016	Radio Holland (Canada) Ltd.	June 15, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-017	TELUS Integrated Communications Inc.	June 20, 2000	Decision issued November 2, 2000 Complaint valid in part
PR-2000-018	Xwave Solutions Inc.	June 28, 2000	Decision issued September 26, 2000 Complaint not valid
PR-2000-019	TELUS Integrated Communications Inc.	June 29, 2000	Decision issued November 10, 2000 Complaint not valid
PR-2000-020	Sicom Systems Ltd.	June 30, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-021	Brookfield LePage Johnson Controls Facility Management Services	June 30, 2000	Decision issued September 6, 2000 Complaint valid
PR-2000-022	MIL Systems/Fleetway Inc.	July 6, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-023	K-Lor Contractors Services Ltd.	July 11, 2000	Decision issued November 23, 2000 Complaint not valid
PR-2000-024	AT&T Canada Corp.	July 13, 2000	Decision issued November 27, 2000 Complaint valid
PR-2000-025	PluriVox Media Corp.	July 17, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-026	Smartnet, Dynasty Components, a division of DCI, and MediaLog Systems Inc.	July 19, 2000	Dismissed/Late filing
PR-2000-027	SciAx Technology Inc.	July 21, 2000	Not accepted for inquiry/Late filing
PR-2000-028	Global Upholstery Co. Inc.	August 3, 2000	Decision issued November 1, 2000 Complaint not valid
PR-2000-029	K-LOR Contractors Services (BC) Ltd.	August 11, 2000	Complaint withdrawn
PR-2000-030	E.S.E.	August 29, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-031	Management 2000	September 5, 2000	Not accepted for inquiry/Late filing

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-2000-032	RIV Limited	September 11, 2000	Complaint withdrawn
PR-2000-033	Dictaphone Canada	September 28, 2000	Not accepted for inquiry/Late filing
PR-2000-034	C ² Logistics Inc.	October 3, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-035	TELUS Integrated Communications Inc.	June 20, 2000	Decision issued November 2, 2000 Complaint valid in part
PR-2000-036	E.H. Industries Limited	October 11, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-037	Computer Talk Technology Inc.	October 25, 2000	Decision issued February 26, 2001 Complaint not valid
PR-2000-038	Papp Plastics & Distribution Ltd.	November 2, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-039	Siemens Westinghouse Incorporated	November 3, 2000	Decision issued March 19, 2001 Complaint valid in part
PR-2000-040	Canadian Helicopters Limited	November 16, 2000	Decision issued February 19, 2001 Complaint not valid
PR-2000-041	BancTec (Canada) Inc.	November 16, 2000	Decision issued February 14, 2001 Complaint valid in part
PR-2000-042	Spallumcheen Band	December 13, 2000	Accepted for inquiry
PR-2000-043	Sirius Consulting Group Inc.	December 13, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-044	Polaris Inflatable Boats (Canada) Ltd.	December 15, 2000	Accepted for inquiry
PR-2000-045	Norleans Technologies Inc.	December 19, 2000	Not accepted for inquiry/Not a potential supplier
PR-2000-046	Greenbelt Agripark	December 21, 2000	Not accepted for inquiry/Not a designated contract
PR-2000-047	Valcom Ltd.	December 27, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-048	The Kirkland Partnership Inc.	December 28, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-049	Polaris Inflatable Boats (Canada) Ltd.	December 15, 2000	Accepted for inquiry
PR-2000-050	Polaris Inflatable Boats (Canada) Ltd.	December 15, 2000	Accepted for inquiry
PR-2000-051	Polaris Inflatable Boats (Canada) Ltd.	December 15, 2000	Accepted for inquiry
PR-2000-052	Polaris Inflatable Boats (Canada) Ltd.	December 15, 2000	Accepted for inquiry
PR-2000-053	Polaris Inflatable Boats (Canada) Ltd.	January 4, 2001	Accepted for inquiry
PR-2000-054	Cisco Systems Canada Co.	January 5, 2001	Complaint withdrawn

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-2000-055	Foundry Networks	January 10, 2001	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-056	Cannabis Research Institute Inc.	January 12, 2001	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-057	Foundry Networks	January 29, 2001	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-058	Boyd Moving & Storage	February 7, 2001	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-059	P&L Communications Inc.	February 8, 2001	Accepted for inquiry
PR-2000-060	Foundry Networks	February 8, 2001	Accepted for inquiry
PR-2000-061	Foundry Networks	February 9, 2001	Not accepted for inquiry/Late filing
PR-2000-062	Foundry Networks	February 10, 2001	Not accepted for inquiry/Late filing
PR-2000-063	FM One Alliance Corp.	February 12, 2001	Accepted for inquiry
PR-2000-064	Wescam Inc.	February 12, 2001	Accepted for inquiry
PR-2000-065	Cifelli Systems Corporation	February 16, 2001	Accepted for inquiry
PR-2000-066	Foundry Networks	February 19, 2001	Not accepted for inquiry/Late filing
PR-2000-067	Foundry Networks	February 19, 2001	Accepted for inquiry
PR-2000-068	Cifelli Systems Corporation	March 1, 2001	Accepted for inquiry
PR-2000-069	Quester Tangent Corporation	March 2, 2001	Not accepted for inquiry/Late filing
PR-2000-070	Lexmark Canada Inc.	March 2, 2001	Accepted for inquiry
PR-2000-071	TAB Canada	March 5, 2001	Accepted for inquiry
PR-2000-072	The Baxter Group Inc.	March 7, 2001	Accepted for inquiry
PR-2000-073	P&L Communications Inc.	March 14, 2001	Accepted for inquiry
PR-2000-074	M.D. Charlton Co. Ltd.	March 16, 2001	Accepted for inquiry
PR-2000-075	M.D. Charlton Co. Ltd.	March 16, 2001	Accepted for inquiry
PR-2000-076	OdySoft Inc.	March 20, 2001	Not accepted for inquiry/Complaint premature
PR-2000-077	Volvo Motor Graders Ltd.	March 23, 2001	Being filed
PR-2000-078	Eurodata Support Services Inc.	March 29, 2001	Being filed

TABLE 2**Procurement Cases Before the Federal Court of Canada Between April 1, 2000, and March 31, 2001**

File No.	Complainant	Applicant	File No./ Status
PR-98-040	Cougar Aviation Limited	Cougar Aviation Limited	A—421—99 Application dismissed
PR-98-047	Novell Canada, Ltd.	Novell Canada, Ltd.	A—440—99 Application allowed
PR-99-001	Novell Canada, Ltd.	Novell Canada, Ltd.	T—1415—99 Application dismissed A—481—99 Application dismissed
PR-99-030	Novell Canada, Ltd.	Novell Canada, Ltd.	A—759—99
PR—99—034	MIL Systems and Fleetway Inc.	Siemens Westinghouse Inc.	A—195—00 Application allowed in part
Pr—99—034	MIL Systems and Fleetway Inc.	PWGSC	A—221—00 Application allowed in part
PR—99—051	Ace/Clear Defense Inc.	National Gallery of Canada	A—481—00
PR—99—053	Rolls-Royce Industries Canada Inc.	Rolls-Royce Industries Canada Inc.	T—2030—00
PR—2000—008 and PR—2000—021	Brookfield Lepage Johnson Controls	Canada Post Corporation	A—624—00 A—628—00 Applications withdrawn
PR—2000—018	X-Wave Solutions Inc.	X-Wave Solutions Inc.	A—668—00
PR—2000—017 and PR—2000—035	Telus Integrated Communications Inc.	Bell Nexxia Inc.	A—747—00
PR—2000—019	Telus Integrated Communications Inc.	Telus Integrated Communications Inc.	T—1297—00
PR—2000—023	K-Lor Contractors Services Ltd.	PWGSC	A—578—00 Application withdrawn
PR—2000—036	E.H. Industries Limited	E.H. Industries Limited	A—696—00 Application dismissed
PR—2000—039	Seimens Westinghouse Inc.	Seimens Westinghouse Inc.	A—203—01

CHAPTER VII

TOWARD THE ELECTRONIC ADMINISTRATIVE RECORD - THE TRIBUNAL'S EXPERIENCE

Introduction

For a number of years, the Tribunal has recognized the value added of information technology in its day-to-day activities. Information technology has had an impact on the operations of all organizational units within the Tribunal. The Tribunal's objective in relying more and more on information technology is to streamline and optimize its procedures and processes. The development of a case-tracking system for appeals of the CCRA's decisions, of a correspondence-tracking system, of a wizard to assist in the preparation of staff reports in Tribunal proceedings and of the Tribunal's Web site are only a few of the Tribunal's information technology initiatives.

The Tribunal also recognized that information technology could bring efficiencies in the area of compilation of the administrative (official) record in its proceedings and in the management of the hearing process. Therefore, it undertook to assess how the automation of the administrative record could improve its operations.

Planning the Migration to the Electronic Record

The Secretariat of the Tribunal, the branch responsible for corporate services, including information technology, was given the task of developing a strategic plan to support the migration of the Tribunal's paper-based administrative record to an electronic record.

Unlike the majority of federal quasi-judicial tribunals and boards that have a single mandate, the Tribunal has a diversified mandate comprising five areas of jurisdiction. The challenge was to develop a strategic plan that could address all the areas of the Tribunal's jurisdiction, recognizing that each area has its own specific requirements. Other challenges associated with this initiative include: the need to process expeditiously substantial volumes of case-related documents received at cyclical points during an inquiry; and the need to make available, in a timely manner, to panel members and staff assigned to a case, incoming case-related documents.

Tribunal's Vision

The strategic plan identified the following three areas where information technology could help in the management of case-related information:

Laying Down the Ground Work

- Compilation of the administrative record
- Automation of the activities relating to the hearing stage of an inquiry
- Electronic communications with parties during a proceeding

The strategic plan recognized that, even though these three areas relate to activities that take place in the context of an inquiry, they could not be addressed concurrently. They would have to be addressed using an incremental approach.

The Tribunal's vision for the electronic record was ambitious. The Tribunal was looking for more than a tracking system for documents making up the administrative record. Its objective was to make the electronic record fully searchable, to use it in the hearing room to allow better management of available hearing time and to make it available to parties and counsel participating in an inquiry.

It was recognized early in the process that substantial time would be needed in the planning stage. Not only did it entail identifying the required information technology infrastructure, but also having the Registrar Office staff with the proper skills set, documenting Tribunal processes and identifying and selecting the most appropriate application to support the initiative.

Having defined the Tribunal's vision for the electronic record, it was important to ensure that this vision was shared by Tribunal members, senior management and staff. To this end, a benefits realization study was commissioned from a consulting firm. The purpose of the study was to identify, through a series of individual interviews with members, senior management and staff, the benefits of migrating to an electronic record. The findings of these interviews were reviewed by senior management to acquire a better understanding of the expectations and benefits identified and to validate them.

There was also a need to better understand how case-related documents and information travels within the Tribunal, i.e. where do documents and information originate, how are they processed and distributed, what are the end uses. A consulting firm was given the task of analyzing the flow of information. The results of this study were of assistance to the Tribunal in validating its information flows. The resulting report is also used as a training tool for Registrar Office staff responsible for the compilation of the administrative record.

At this stage of the project, the operational requirements of the Registrar Office, in the context of the migration to an electronic administrative record, were identified and assessed as to how they would affect the Tribunal's network infrastructure.

Selecting the RDIMS Application

Finding the right application for the Tribunal's electronic record initiative proved to be a difficult undertaking. The Tribunal considered a number of possible applications. Some of the problems encountered were: the lack of interest from a potential supplier; the lack of a bilingual capability of some applications; the fact that one application was paper based, while the Tribunal was looking for an electronic solution for the filing of documents; and the cost element.

The Tribunal finally selected the RDIMS (Records, Document and Information Management System) as a possible solution for its initiative. In July 1998, the Government of Canada awarded a contract for the implementation of the RDIMS to the CGI Group, an information technology consulting group. The goals of this initiative were twofold:

- Take advantage of existing technology to modernize records and information management functions and, in so doing, improve the cost effectiveness of service delivery to the public and of internal operations.
- Standardize records and information management practices, software and systems to facilitate the seamless exchange of information between federal departments.

The RDIMS is made up of an integrated suite of commercial off-the-shelf software products that provide key components for a modern electronic workplace. The suite includes:

- a documents module,
- a records management module,
- a full text indexing and search module,
- a document routing module,
- an imaging module, and
- a reporting module

The Tribunal's interest in the RDIMS application was not the traditional records management function, but rather the imaging capability that it offered and the possibility of tailoring the application to meet the Tribunal's information requirements.

Experimenting with the Electronic Record - The RDIMS Pilot Project

The Tribunal decided that it would use the RDIMS application on a pilot project basis and that the project would involve the Tribunal's jurisdiction with regard to inquiries on dumping and subsidizing complaints, the jurisdiction that generates the most extensive administrative record (in excess of 30,000 pages). It was also decided that the pilot project would consist in compiling the electronic record of a recently completed dumping inquiry. Staff assigned to that inquiry would use the application to validate its functionalities.

The pilot project was launched on May 29, 2000, and took four months to complete. The objectives were to:

- determine if the Tribunal's case management capability could be increased to support the deliberative and decision-making process;
- ascertain the feasibility of implementing an electronic document management system relying primarily on imaging technology;
- test the capability of the RDIMS to provide panel members and staff assigned to a case with timely access to a wide spectrum of documents making up the administrative record;
- test the capability of the RDIMS to carry out effective, exhaustive and timely research within the administrative record;
- test the document routing module to ensure that it could provide timely access to documents making up the administrative record; and
- assess the capability of the RDIMS to provide proper access controls and recoverability thereby ensuring adequate protection of the Tribunal's information holdings.

The following functions of the RDIMS application were successfully tested: scanning; digitization (optical character recognition [OCR]); data capture; storage (electronic repository); security; access to the information; and reporting. However, the following functions still required enhancements and further research: search; annotation; and workflow. This last function was not robust enough to meet the Tribunal's requirement for notification of panel members and staff assigned to a case.

A number of lessons were also learned:

- The Tribunal needs to better define its requirements.
- The digitization function is not reliable in terms of quality (error rate). As a result, there is a need for the Tribunal to obtain electronic input documents from parties to ensure 100 percent accuracy.
- It will be difficult, if not impossible, to identify a search engine comparable to Folio Views, which is presently used by the Tribunal to search the transcript of hearings.
- The application must allow the distribution of case-related information to be done more rapidly.
- There is a need to improve the user friendliness of the application.

The Tribunal came to the conclusion that the RDIMS application lacked the necessary flexibility to make it a viable option for the Tribunal. Furthermore, the lack of user friendliness of the RDIMS was of concern to the Tribunal.

The Tribunal decided that it would pursue its efforts to identify an application that would meet its operational requirements, as it recognized the benefits to be derived from a fully operational electronic administrative record.

In September 2000, the Tribunal decided to carry out a second pilot project with a package called ToolKit, which uses the Filemaker Pro application. The ToolKit package was attractive to the Tribunal because it was developed by people with an understanding and knowledge of a court environment, it has a bilingual capability, and there is local technical support for the product.

ToolKit Pilot Project

For its second pilot project, the Tribunal maintained the same overall objectives that were established for the RDIMS pilot project. However, the pilot would be conducted in parallel with an actual dumping inquiry over a four-month period. The *Grain Corn* inquiry (NQ-2000-005) was selected. Panel members and staff would be given the option of working with the paper and/or electronic administrative record.

Based on the lessons learned from the first pilot project, the Tribunal recognized that it needed to improve its requirements definition. A business process analyst was recruited to act as the intermediary between the information technology specialists and the users of the application, to assist with the identification of the Tribunal's operational requirements, to provide training and assistance to users and to work with the application's developer to define and implement the necessary enhancements. The Tribunal also recognized that it could not rely on the OCR application because the poor quality of the resulting documents and the limitation that this placed on the search capability. For this reason, it requested that parties to the inquiry file their submissions and responses to various questionnaires in electronic format.

The ToolKit is made up of six modules:

- Documents
- Transcripts
- Work notes
- Participants
- Subjects
- Names

**Results of the Toolkit
Pilot Project**

The documents module allows the user to search the administrative record in its entirety using one of two tools: the document quick finder or the search screen, which allows for a more in-depth search.

The transcripts module offers the possibility of searching the transcript of a hearing in two modes: Folio Views or PDF. Over the years, the Tribunal has refined the search capabilities available through Folio Views to meet its specialized requirements. On the ToolKit, Folio Views is only available to search the transcript, while the Adobe dictionary can be used to search the entire administrative record, including the transcript.

The work notes module is presently under construction. It is expected to allow users to save notes and annotations on specific documents. It will also provide the possibility of sharing these notes and annotations with other staff assigned to a case.

The participants module provides access to relevant information on parties and counsel participating in a case. An interesting feature of the module is the access to the actual notices of participation, notices of representation and declarations and undertakings filed with the Tribunal by parties and counsel.

The subjects module allows the identification of specific subjects to be tracked throughout the entire record.

The names module allows the user to keep a directory of key people or other contacts in a case.

As of the end of fiscal year 2000-2001, the pilot project was still underway. Nevertheless, there are a number of preliminary observations that can be drawn:

- The ToolKit provides ample flexibility to meet the specific operational requirements of the Tribunal. The ease with which enhancements can be made and the availability of the application's developer are most impressive.
- The recruitment of a business process analyst has proven to be a key ingredient in the success already achieved. It has allowed the Tribunal to properly define its requirements.
- The ToolKit has quickly gained the acceptance of users. It is fair to say that the ToolKit is a user-friendly package.

The Tribunal's decision to request that parties file electronic versions of their submissions was justified. The time required to digitize electronic documents is insignificant compared to the time required to digitize scanned documents. More

Future of the Electronic Record at the Tribunal

importantly, the Tribunal's decision has significantly improved the quality of the application's search function.

The Tribunal will carry out an in-depth review of the ToolKit pilot project. The evaluation should be completed by the end of May 2001. If the results are positive, the Tribunal will undertake to make the electronic administrative record an integral part of its operations by using a phased-in approach.

Phase I will involve the migration from a pilot project mode to an operational mode. This migration will apply to SIMA cases only. It will involve the development of a guideline governing the filing of electronic documents with the Tribunal.

Phase II will involve making the electronic administrative record available and accessible in the hearing room.

Phase III will involve making the ToolKit available to counsel and parties participating in SIMA proceedings.

Phase IV will focus on the implementation of the ToolKit in other areas of the Tribunal's jurisdiction, i.e. procurement, appeals and textile cases.

Phase V will be concerned with the installation of a secured electronic communications network between the Tribunal and counsel offices to improve the timeliness of access to the Tribunal's administrative record.

Phase VI will focus on the implementation of a platform that will allow the electronic filing of responses to questionnaires.

Conclusion

Over the years, the Tribunal has supported the move towards the greater use of information technology as a means of improving service delivery. The Tribunal is convinced that the electronic administrative record will help to streamline its operations and facilitate the work of all participants in a Tribunal proceeding. The initiative has the potential to enhance service delivery to stakeholders and is therefore in line with the spirit of the Government On-line initiative.

TRIBUNAL PUBLICATIONS ISSUED DURING THE FISCAL YEAR

April 2000	Canadian International Trade Tribunal Rules Guideline on Interim Reviews Guideline on Preliminary Injury Inquiries Guideline on Public Interest Inquiries
May 2000	Annual Report for the Fiscal Year Ending March 31, 2000
June 2000	Bulletin - Vol. 12 No. 1
August 2000	Draft Guideline on Expiry Reviews
September 2000	Bulletin - Vol. 12 No. 2
December 2000	Bulletin - Vol. 12 No. 3
January 2001	Textile Reference: Annual Status Report
March 2001	Bulletin - Vol. 12 No. 4

Publications can be obtained by contacting the Secretary, Canadian International Trade Tribunal, Standard Life Centre, 333 Laurier Avenue West, Ottawa, Ontario K1A 0G7 (613) 993-3595, or they can be accessed on the Tribunal's Web site.

PUBLICATIONS DU TRIBUNAL RENDUES PENDANT L'EXERCICE

Avril 2000	Ligne directrice sur les enquêtes d'intérêt public Ligne directrice sur les enquêtes préliminaires de dommage Ligne directrice sur les réexamens intermédiaires Règles du Tribunal canadien du commerce extérieur
Mai 2000	Rapport annuel pour l'exercice se terminant le 31 mars 2000
Juin 2000	Bulletin - Vol. 12, n° 1
Août 2000	Ebauche de ligne directrice concernant les réexamens relatifs à l'expiration
Septembre 2000	Bulletin - Vol. 12, n° 2
Décembre 2000	Bulletin - Vol. 12, n° 3
Janvier 2001	Saisine sur les textiles : rapport de situation annuel
Mars 2001	Bulletin - Vol. 12, n° 4

On peut se procurer ces publications en communiquant avec le secrétaire du Tribunal canadien du commerce extérieur, Standard Life Centre, 333, avenue Laurier Ouest, Ottawa (Ontario) K1A 0G7 (613) 993-3595, ou elles peuvent être téléchargées du site Web du Tribunal.

Conclusion

À la **Phase III**, l'outil ToolKit sera mis à la disposition des conseillers et des parties qui participent à une procédure afférente à la LMSL.

La **Phase IV** placera l'accent sur la mise en œuvre de ToolKit dans d'autres domaines de compétence du Tribunal, c.-à-d. pour les causes afférentes aux marchés publics, aux appels et aux textiles.

La **Phase V** visera l'installation d'un réseau de communications électroniques sécuritaires entre le Tribunal et les cabinets des conseillers pour accélérer l'accès au dossier administratif du Tribunal.

La **Phase VI** visera principalement la mise en œuvre d'une plate-forme qui permettra le dépôt électronique des réponses aux questionnaires.

Au fil des ans, le Tribunal a soutenu le changement vers une utilisation accrue de la technologie de l'information dans le but d'améliorer la livraison des services. Le Tribunal est convaincu que le dossier administratif électronique contribuera à la rationalisation de son activité et facilitera le travail de tous les participants à une de ses procédures. Il s'agit là d'une initiative qui est susceptible d'améliorer la livraison des services aux intervenants et qui correspond donc à l'esprit de l'initiative Gouvernement en direct.

Le module de sujets permet de déterminer des sujets spécifiques à repérer dans l'ensemble du dossier.

Le module de noms permet à l'utilisateur de garder un répertoire des personnes clés ou d'autres ressources avec lesquelles communiquer dans une cause.

Le projet pilote était encore en cours à la fin de l'exercice 2000-2001. Cependant, il est possible de formuler les observations suivantes :

- la souplesse de l'outil Toolkit est amplement suffisante pour satisfaire les besoins opérationnels spécifiques du Tribunal, la facilité avec laquelle il est possible d'y apporter des perfectionnements, ainsi que la disponibilité du concepteur de l'application sont des plus impressionnantes;
- le recrutement d'un analyste de processus d'affaires s'est révélé un ingrédient clé des succès déjà obtenus; cette stratégie a permis au Tribunal de définir correctement ses besoins;
- l'outil Toolkit a rapidement été accepté des utilisateurs; il est juste de dire qu'il s'agit d'un progiciel convivial.

La décision du Tribunal de demander aux parties de déposer des versions électroniques de leurs exposés était justifiée. Le temps qu'il faut pour numériser des documents électroniques n'est rien par rapport au temps nécessaire pour numériser des documents lus par balayage optique. Un autre élément, d'une importance encore plus grande, est que cette décision du Tribunal a amélioré considérablement la qualité de la fonction de recherche de l'application.

Le Tribunal analysera en profondeur le projet pilote Toolkit. L'évaluation devrait être terminée à la fin de mai 2001. Si les résultats sont positifs, le Tribunal entreprendra de faire du dossier administratif électronique une partie intégrante de ses opérations, en l'installant progressivement.

La Phase I comprendra la migration du mode de projet pilote à un mode opérationnel. Elle ne touchera que les causes afférentes à la LMSI. Le Tribunal préparera une ligne directrice sur le dépôt des documents électroniques auprès du Tribunal.

À la Phase II, le dossier administratif électronique deviendra disponible et accessible à la salle d'audience.

Résultats du projet pilote Toolkit

Avenir du dossier électronique au Tribunal

et des conseils aux utilisateurs et de collaborer avec le concepteur de l'application à la définition et à la mise en oeuvre des améliorations nécessaires. Le Tribunal était aussi conscient qu'il ne pouvait se fier à l'application de lecture optique, étant donné la piètre qualité des documents produits et les contraintes imposées à la capacité de recherche. Il a donc demandé aux parties à l'enquête de déposer leurs exposés et leurs réponses aux divers questionnaires sur support électronique.

L'outil Toolkit comprend les six modules suivants :

- documents
- transcriptions
- notes de travail
- participants
- sujets
- noms

Le module de documents permet à l'utilisateur d'effectuer des recherches dans l'ensemble du dossier administratif au moyen de deux outils : le chercheur rapide de document et l'écran de recherche, qui permet une recherche plus approfondie.

Le module de transcriptions permet d'effectuer des recherches dans les transcriptions des audiences, en deux modes : Folio Views ou PDF. Au fil des ans, le Tribunal a perfectionné les capacités de recherche disponibles à partir de Folio Views en fonction de ses besoins spéciaux. Lorsque il fonctionne sur le Toolkit, Folio Views n'est disponible qu'aux fins de la recherche dans la transcription, tandis que le dictionnaire Adobe sert à effectuer des recherches dans l'ensemble du dossier administratif, y compris la transcription.

Le module de notes de travail est présentement en voie de construction. Il devrait permettre aux utilisateurs de sauvegarder les notes et les commentaires sur des documents donnés. Il ouvre aussi la possibilité de partager ces notes et commentaires avec les autres membres du personnel désignés pour la cause.

Le module de participants permet d'accéder à l'information pertinente sur les parties et les conseillers qui participent à une cause. Une caractéristique intéressante du module est qu'il permet l'accès aux véritables avis de participation, avis de représentation et actes de déclaration et d'engagement déposés auprès du Tribunal par les parties et les conseillers.

Nous avons aussi tiré diverses leçons, dont les leçons ci-après.

- Le Tribunal doit définir ses besoins plus précisément.
- La qualité (taux d'erreur) de la numérisation n'était pas fiable. Il faudrait donc que le Tribunal obtienne des parties des documents sous forme électronique pour garantir une précision à 100 p. 100.
- Il allait être difficile, voire impossible, de trouver un moteur de recherche comparable à Folio Views, que le Tribunal utilise présentement pour consulter la transcription des audiences.
- L'application doit permettre une distribution plus rapide de l'information sur les causes.
- Une plus grande convivialité de l'application s'impose.

Le Tribunal en est venu à la conclusion que l'application SGDDI n'avait pas la souplesse nécessaire pour représenter une option valable pour le Tribunal. En outre, le manque de convivialité du SGDDI préoccupait le Tribunal.

Le Tribunal a décidé de continuer à chercher une application qui répondrait à ses besoins opérationnels, puisqu'il était conscient des avantages associés à un dossier administratif électronique entièrement exploitable.

En septembre 2000, le Tribunal a décidé de lancer un deuxième projet pilote, portant sur le progiciel appelé Toolkit (boîte à outils) exploitable sur l'application Filemaker Pro. Les attributs de ce progiciel pour le Tribunal étaient notamment que ses concepteurs comprennent et connaissent le milieu des tribunaux, qu'il a une capacité bilingue et qu'il bénéficie d'un soutien technique local.

Le Tribunal a gardé, pour son deuxième projet pilote, les mêmes objectifs globaux qu'il avait établis pour le projet pilote SGDDI. Cependant, il a décidé de le mener parallèlement à une véritable enquête de dumping, s'étendant sur une période de quatre mois. L'enquête *Matis-grain* (NQ-2000-005) a été retenue à cette fin. Il s'agissait de donner aux membres du jury et au personnel le choix de travailler à partir du dossier administratif électronique ou du dossier sur support papier, ou des deux.

À la lumière des leçons tirées du premier projet pilote, le Tribunal savait qu'il fallait mieux définir ses besoins. Il a retenu les services d'un analyste de processus d'affaires et l'a chargé d'agir à titre d'intermédiaire entre les spécialistes en technologie de l'information et les utilisateurs de l'application, d'aider à définir les besoins opérationnels du Tribunal, de donner de la formation

Le Tribunal a décidé de se servir de l'application SGDDI dans le cadre d'un projet pilote et de faire porter cette mise à l'essai sur le domaine de compétence du Tribunal lié aux enquêtes sur les plaintes de dumping et de subventionnement, ces enquêtes étant celles qui donnent lieu au dossier administratif le plus volumineux (plus de 30 000 pages). En outre, il a été décidé que le projet pilote consisterait à compiler le dossier électronique d'une enquête de dumping récemment terminée. Le personnel à qui l'enquête avait été confiée allait se servir de l'application pour en valider les fonctions.

Le projet pilote a été lancé le 29 mai 2000, et a nécessité quatre mois. Il visait les objectifs suivants :

- déterminer si la capacité de gestion des causes du Tribunal pourrait être augmentée de façon à soutenir le processus de délibération et de prise de décisions;
- déterminer la faisabilité de la mise en œuvre d'un système de gestion des documents électroniques appuyé principalement sur la technologie de l'imagerie;
- mettre à l'essai la capacité du SGDDI d'offrir aux membres du jury et au personnel désignés pour une cause, en temps opportun, l'accès au vaste éventail de documents qui composent le dossier administratif;
- mettre à l'essai la capacité du SGDDI de servir l'exécution efficace, complète et rapide d'une recherche au sein du dossier administratif;
- mettre à l'essai le module d'acheminement de documents pour en vérifier la capacité d'offrir, en temps opportun, l'accès aux documents compris dans le dossier administratif;
- évaluer la capacité du SGDDI de soutenir des mécanismes convenables de contrôle d'accès et d'extraction et, de ce fait, de protéger suffisamment les renseignements détenus par le Tribunal.

La mise à l'essai des fonctions suivantes de l'application SGDDI a été réussie : balayage, numérisation (lecture optique), saisie de données, stockage (archivage électronique), sécurité, accès à l'information et production de rapports. Cependant, les fonctions suivantes nécessitaient des améliorations et d'autres essais : recherche, annotation et acheminement. Cette dernière fonction n'était pas assez robuste pour satisfaire aux exigences du Tribunal en matière de notification des membres du jury et du personnel du Tribunal désignés pour une cause.

C'est à cette étape du projet que les exigences opérationnelles du Greffe, dans le contexte d'une migration au dossier administratif électronique, ont été définies et qu'a été évaluée la manière dont elles influencent sur l'infrastructure de réseau du Tribunal.

Trouver l'application qui convenait à l'instauration du dossier électronique au Tribunal s'est révélée une tâche difficile. Le Tribunal a examiné diverses applications possibles. Voici certaines des difficultés : le manque d'intérêt d'un fournisseur potentiel, le manque de capacité bilingue de certaines applications, le fait qu'une des applications dépendait d'un support papier alors que le Tribunal voulait une solution électronique au dépôt des documents et, enfin, les coûts.

Le Tribunal a finalement retenu le SGDDI (Système de gestion des dossiers, des documents et de l'information) à titre de solution possible dans le cadre de son initiative. En juillet 1998, le gouvernement du Canada a accordé un contrat pour la mise en œuvre du SGDDI au Groupe CGI, un groupe d'experts-conseils en technologie de l'information. Cette initiative visait deux objectifs :

- tirer parti de la technologie existante pour moderniser les fonctions de gestion des dossiers et de l'information et, ce faisant, améliorer le rapport coût-avantage de la livraison des services à la population et des opérations internes;
- normaliser les pratiques, les logiciels et les systèmes de gestion des dossiers et de l'information pour faciliter l'échange transparent de l'information entre les divers ministères fédéraux.

Le SGDDI est un progiciel, composé d'une suite intégrée de logiciels offerts en vente libre dans le commerce, qui procure les éléments clés d'un milieu de travail électronique moderne. Ce progiciel comprend :

- un module de documents;
- un module de gestion des dossiers;
- un module d'indexage du texte intégral et de recherche;
- un module d'acheminement de documents;
- un module d'imagerie;
- un module de production de rapports.

L'intérêt du Tribunal à l'endroit du SGDDI ne se rapportait pas à la fonction traditionnelle de gestion des dossiers, mais plutôt à la capacité d'imagerie qu'offrait le SGDDI et à la possibilité de l'adapter pour répondre aux besoins d'information du Tribunal.

Vision du Tribunal

Le plan stratégique a relevé trois secteurs où la technologie de l'information pouvait contribuer à la gestion de l'information pertinente aux causes. Il s'agit des secteurs suivants :

- compilation du dossier administratif;
- automatisation de l'activité connexe à l'audience tenue dans le cadre d'une enquête;
- communications électroniques avec les parties durant une procédure.

Le plan stratégique a reconnu que, même si les trois secteurs susmentionnés se rapportaient à l'activité qui se déroule dans le contexte d'une enquête, ils ne pouvaient être traités concurremment. Il fallait les aborder progressivement.

La vision du Tribunal au sujet du dossier électronique était ambitieuse. Le

Tribunal recherchait plus qu'un simple système de suivi des documents qui composent le dossier administratif. Son objectif était d'obtenir un dossier électronique pleinement consultable, de s'en servir à la salle d'audience pour atteindre une meilleure gestion du temps d'audience disponible et de le mettre à la disposition des parties et des conseillers participant à une enquête.

Travail préparatoire

Dès les débuts du processus, il est apparu qu'un temps considérable allait

devoir être réservé à la planification. Il ne s'agissait pas de simplement définir l'infrastructure de la technologie de l'information, mais aussi de doter le

Tribunal et de trouver et choisir l'application la plus apte à soutenir l'initiative.

Après avoir défini la vision du Tribunal au sujet du dossier électronique, il

importait de faire en sorte que les membres, les cadres supérieurs et les autres employés du Tribunal partagent cette vision. À cette fin, une société d'experts-

conseils a été chargée d'une étude de sensibilisation aux avantages. L'objectif de l'étude était de définir, au moyen d'une série d'entrevues particulières avec les

membres, les cadres supérieurs et les autres employés, les avantages d'une migration au dossier électronique. Les membres de la haute direction ont

examiné les résultats de ces entrevues afin d'avoir une meilleure compréhension des attentes et des avantages recensés et d'en établir la validité.

Il fallait également mieux comprendre le cheminement, au sein du Tribunal,

de l'information et des documents pertinents aux causes, c'est-à-dire leur source, la manière dont ils sont traités et diffusés, leurs utilisations ultimes. L'analyse du

cheminement de l'information a été confiée à une société d'experts-conseils. Les résultats de cette analyse ont aidé le Tribunal dans la validation du cheminement

de l'information. Le rapport qui en est découlé sert aussi d'outil de formation du personnel du Greffe chargé du dossier administratif.

CHAPITRE VII

VERS LE DOSSIER ADMINISTRATIF ÉLECTRONIQUE - EXPÉRIENCE DU TRIBUNAL

Introduction

Depuis plusieurs années, le Tribunal reconnaît la valeur ajoutée de la technologie de l'information dans son activité quotidienne. Cette technologie a eu une incidence sur le fonctionnement de toutes les unités du Tribunal. En s'appuyant de plus en plus sur la technologie de l'information, le Tribunal vise à rationaliser et à optimiser ses procédures et ses processus. L'élaboration d'un système de suivi des causes concernant les appels interjetés à l'égard de décisions de l'ADRC, d'un système de suivi de la correspondance, d'un logiciel assistant pour la préparation des rapports du personnel produits dans le cadre des procédures du Tribunal et du site Web du Tribunal ne sont que quelques-unes des initiatives de ce dernier en matière de technologie de l'information.

Le Tribunal reconnaît aussi que la technologie de l'information peut accroître l'efficacité dans la compilation du dossier administratif (officiel) de ses procédures et la gestion du processus d'audience. Par conséquent, le Tribunal a entrepris d'évaluer la façon dont l'automatisation du dossier administratif pourrait améliorer son fonctionnement.

L'élaboration d'un plan stratégique pour soutenir la migration du dossier administratif du Tribunal, d'un support papier à un support électronique, a été confiée au Secréariat du Tribunal, l'unité responsable des services généraux de ce dernier, y compris de la technologie de l'information.

Planification de la migration au dossier électronique

À la différence de la majorité des tribunaux et conseils judiciaires fédéraux dont le mandat est unique, le Tribunal s'est vu confier un mandat diversifié comprenant cinq domaines d'attributions. Le défi qu'il lui fallait relever consistait à élaborer un plan stratégique pour traiter de tous les domaines de compétence du Tribunal, compte tenu que chacun d'eux présente ses exigences propres. Il devait également prévoir une réponse aux défis suivants : le besoin de traiter rapidement des volumes considérables de documents pertinents reçus à divers moments du cycle de l'enquête et le besoin de mettre rapidement à la disposition des membres du jury et du personnel désignés pour une cause les documents soumis relativement à cette dernière.

TABLEAU 2

Causes concernant les marchés publics devant la Cour fédérale du Canada entre le 1^{er} avril 2000 et le 31 mars 2001

Dossier n°	Partie plaignante	Demanderesse	Dossier n°/état
PR-98-040	Cougar Aviation Limited	Cougar Aviation Limited	A-421-99 Demande rejetée
PR-98-047	Novell Canada, Ltd.	Novell Canada, Ltd.	A-440-99 Demande admise
PR-99-001	Novell Canada, Ltd.	Novell Canada, Ltd.	T-1415-99 Demande rejetée A-481-99 Demande rejetée
PR-99-030	Novell Canada, Ltd.	Novell Canada, Ltd.	A-759-99 Demande admise en partie
PR-99-034	MIL Systems and Fleetway Inc.	Siemens Westinghouse Inc.	A-195-00 Demande admise en partie
PR-99-034	MIL Systems and Fleetway Inc.	PWGSC	A-221-00 Demande admise en partie
PR-99-051	Ace/Clear Defense Inc.	National Gallery of Canada	A-481-00
PR-99-053	Rolls-Royce Industries Canada Inc.	Rolls-Royce Industries Canada Inc.	T-2030-00
PR-2000-008 et PR-2000-021	Brookfield Lepage Johnson Controls	Canada Post Corporation	A-624-00 A-628-00 Demandes retirées
PR-2000-018	X-Wave Solutions Inc.	X-Wave Solutions Inc.	A-668-00
PR-2000-017 et PR-2000-035	Telus Integrated Communications Inc.	Bell Nexia Inc.	A-747-00
PR-2000-019	Telus Integrated Communications Inc.	Telus Integrated Communications Inc.	T-1297-00
PR-2000-023	K-Lor Contractors Services Ltd.	PWGSC	A-578-00 Demande retirée
PR-2000-036	E.H. Industries Limited	E.H. Industries Limited	A-696-00 Demande rejetée
PR-2000-039	Siemens Westinghouse Inc.	Siemens Westinghouse Inc.	A-203-01

Règlement des plaintes concernant les marchés publics (suite)

Dossier n°	Partie plaignante	Date de réception de la plainte	État/décision
PR-2000-052	Polaris Inflatable Boats (Canada) Ltd.	Le 15 décembre 2000	Décision d'enquêter
PR-2000-053	Polaris Inflatable Boats (Canada) Ltd.	Le 4 janvier 2001	Décision d'enquêter
PR-2000-054	Cisco Systems Canada Co.	Le 5 janvier 2001	Plainte retirée
PR-2000-055	Foundry Networks	Le 10 janvier 2001	Refus d'enquêter, aucune indication d'une infraction
PR-2000-056	Cannabis Research Institute Inc.	Le 12 janvier 2001	Refus d'enquêter, aucune indication d'une infraction
PR-2000-057	Foundry Networks	Le 29 janvier 2001	Refus d'enquêter, aucune indication d'une infraction
PR-2000-058	Boyd Moving & Storage	Le 7 février 2001	Refus d'enquêter, aucune indication d'une infraction
PR-2000-059	P&L Communications Inc.	Le 8 février 2001	Décision d'enquêter
PR-2000-060	Foundry Networks	Le 8 février 2001	Décision d'enquêter
PR-2000-061	Foundry Networks	Le 9 février 2001	Refus d'enquêter, dépôt tardif
PR-2000-062	Foundry Networks	Le 10 février 2001	Refus d'enquêter, dépôt tardif
PR-2000-063	FM One Alliance Corp.	Le 12 février 2001	Décision d'enquêter
PR-2000-064	Wescam Inc.	Le 12 février 2001	Décision d'enquêter
PR-2000-065	Ciellix Systems Corporation	Le 16 février 2001	Décision d'enquêter
PR-2000-066	Foundry Networks	Le 19 février 2001	Refus d'enquêter, dépôt tardif
PR-2000-067	Foundry Networks	Le 19 février 2001	Décision d'enquêter
PR-2000-068	Ciellix Systems Corporation	Le 1 ^{er} mars 2001	Décision d'enquêter
PR-2000-069	Quester Tangent Corporation	Le 2 mars 2001	Refus d'enquêter, dépôt tardif
PR-2000-070	Lexmark Canada Inc.	Le 2 mars 2001	Décision d'enquêter
PR-2000-071	TAB Canada	Le 5 mars 2001	Décision d'enquêter
PR-2000-072	The Baxter Group Inc.	Le 7 mars 2001	Décision d'enquêter
PR-2000-073	P&L Communications Inc.	Le 14 mars 2001	Décision d'enquêter
PR-2000-074	M.D. Chaffon Co. Ltd.	Le 16 mars 2001	Décision d'enquêter
PR-2000-075	M.D. Chaffon Co. Ltd.	Le 16 mars 2001	Décision d'enquêter
PR-2000-076	Odyssey Inc.	Le 20 mars 2001	Refus d'enquêter, plainte prématurée
PR-2000-077	Volvo Motor Graders Ltd.	Le 23 mars 2001	En cours de dépôt
PR-2000-078	Eurodata Support Services Inc.	Le 29 mars 2001	En cours de dépôt

Règlement des plaintes concernant les marchés publics (suite)

Dossier n°	Partie plaignante	Date de réception de la plainte	État/décision
PR-2000-030	E.S.E.	Le 29 août 2000	Refus d'enquêter, aucune indication d'une infraction
PR-2000-031	Management 2000	Le 5 septembre 2000	Refus d'enquêter, dépôt tardif
PR-2000-032	RIV Limited	Le 11 septembre 2000	Plainte retirée
PR-2000-033	Dictaphone Canada	Le 28 septembre	Refus d'enquêter, dépôt tardif
PR-2000-034	C ² Logistics Inc.	Le 3 octobre 2000	Refus d'enquêter, aucune indication d'une infraction
PR-2000-035	TELUUS Integrated Communications Inc.	Le 20 juin 2000	Décision rendue le 2 novembre 2000 Plainte fondée en partie
PR-2000-036	E.H. Industries Limited	Le 11 octobre 2000	Refus d'enquêter, aucune indication d'une infraction
PR-2000-037	Computer Talk Technology Inc.	Le 25 octobre 2000	Décision rendue le 26 février 2001 Plainte non fondée
PR-2000-038	Papp Plastics & Distribution Ltd.	Le 2 novembre 2000	Refus d'enquêter, aucune indication d'une infraction
PR-2000-039	Siemens Westinghouse Incorporated	Le 3 novembre 2000	Décision rendue le 19 mars 2001 Plainte fondée en partie
PR-2000-040	Canadian Helicopters Limited	Le 16 novembre 2000	Décision rendue le 19 février 2001 Plainte non fondée
PR-2000-041	BancTec (Canada) Inc.	Le 16 novembre 2000	Décision rendue le 14 février 2001 Plainte fondée en partie
PR-2000-042	Bande indienne de Spallumcheen	Le 13 décembre 2000	Décision d'enquêter
PR-2000-043	Sirius Consulting Group Inc.	Le 13 décembre 2000	Refus d'enquêter, aucune indication d'une infraction
PR-2000-044	Polaris Inflatable Boats (Canada) Ltd.	Le 15 décembre 2000	Décision d'enquêter
PR-2000-045	Norleans Technologies Inc.	Le 19 décembre 2000	Refus d'enquêter, pas un fournisseur potentiel
PR-2000-046	Greenbelt Agripark	Le 21 décembre 2000	Refus d'enquêter, ne vise pas un contrat spécifique
PR-2000-047	Valcom Ltd.	Le 27 décembre 2000	Refus d'enquêter, aucune indication d'une infraction
PR-2000-048	The Kirkand Partnership Inc.	Le 28 décembre 2000	Refus d'enquêter, aucune indication d'une infraction
PR-2000-049	Polaris Inflatable Boats (Canada) Ltd.	Le 15 décembre 2000	Décision d'enquêter
PR-2000-050	Polaris Inflatable Boats (Canada) Ltd.	Le 15 décembre 2000	Décision d'enquêter
PR-2000-051	Polaris Inflatable Boats (Canada) Ltd.	Le 15 décembre 2000	Décision d'enquêter

Règlement des plaintes concernant les marchés publics (suite)

Dossier n°	Partie plaignante	Date de réception de la plainte	État/décision
PR-2000-010	Thomson-CSF Systems Canada Inc.	Le 30 mai 2000	Décision rendue le 12 octobre 2000 Plainte non fondée
PR-2000-011	Western Star Trucks Inc.	Le 31 mai 2000	Décision rendue le 11 septembre 2000 Plainte non fondée
PR-2000-012	Situs Consulting Group Inc.	Le 13 juin 2000	Plainte abandonnée pendant le dépôt Plainte non fondée
PR-2000-013	Valley Associates Inc.	Le 13 juin 2000	Refus d'enquête, aucune indication d'une infraction
PR-2000-014	Via Safe	Le 14 juin 2000	Refus d'enquête, ne vise pas un contrat spécifique
PR-2000-015	Trans-Cycle Industries Inc.	Le 14 juin 2000	Plainte retirée
PR-2000-016	Radio Holland (Canada) Ltd.	Le 15 juin 2000	Refus d'enquête, aucune indication d'une infraction
PR-2000-017	TELU Integrated Communications Inc.	Le 20 juin 2000	Décision rendue le 2 novembre 2000 Plainte fondée en partie
PR-2000-018	Xwave Solutions Inc.	Le 28 juin 2000	Décision rendue le 26 septembre 2000 Plainte non fondée
PR-2000-019	TELU Integrated Communications Inc.	Le 29 juin 2000	Décision rendue le 10 novembre 2000 Plainte non fondée
PR-2000-020	Sicom Systems Ltd.	Le 30 juin 2000	Refus d'enquête, aucune indication d'une infraction
PR-2000-021	Brookfield LePage Johnson Controls Facility Management Services	Le 30 juin 2000	Décision rendue le 6 septembre 2000 Plainte fondée
PR-2000-022	MIL Systems/Fleetway Inc.	Le 6 juillet 2000	Refus d'enquête, aucune indication d'une infraction
PR-2000-023	K-Lor Contractors Services Ltd.	Le 11 juillet 2000	Décision rendue le 23 novembre 2000 Plainte non fondée
PR-2000-024	AT&T Canada Corp.	Le 13 juillet 2000	Décision rendue le 27 novembre 2000 Plainte fondée
PR-2000-025	Purivox Media Corp.	Le 17 juillet 2000	Refus d'enquête, aucune indication d'une infraction
PR-2000-026	Smarnet, Dynasty Components, a division of DCI, et Medialog Systems Inc.	Le 19 juillet 2000	Rejeté, dépôt tardif
PR-2000-027	Sclax Technology Inc.	Le 21 juillet 2000	Refus d'enquête, dépôt tardif
PR-2000-028	Global Upholstery Co. Inc.	Le 3 août 2000	Décision rendue le 1 ^{er} novembre 2000 Plainte non fondée
PR-2000-029	K-LOR Contractors Services (BC) Ltd.	Le 11 août 2000	Plainte retirée

TABLEAU 1

Règlement des plaintes concernant les marchés publics entre le 1^{er} avril 2000 et le 31 mars 2001

Dossier n°	Partie plaignante	Date de réception de la plainte	État/décision
PR-99-036	Unisource Technology	Le 8 décembre 1999	Décision rendue le 5 avril 2000 Plainte non fondée
PR-99-037	Educom Training Systems Inc.	Le 16 décembre 1999	Décision rendue le 3 mai 2000 Plainte non fondée
PR-99-040	Brent Moore & Associates	Le 20 décembre 1999	Décision rendue le 4 mai 2000 Plainte non fondée
PR-99-043	Navatar	Le 7 janvier 2000	Décision rendue le 30 mai 2000 Plainte non fondée
PR-99-044	Navatar	Le 10 janvier 2000	Décision rendue le 30 mai 2000 Plainte fondée
PR-99-049	Telus Communications	Le 25 février 2000	Plainte retirée Décision rendue le 29 mai 2000
PR-99-050	StorageTek Canada Inc.	Le 28 février 2000	Plainte fondée Décision rendue le 30 juin 2000
PR-99-051	ACE/ClearDefense Inc.	Le 8 mars 2000	Plainte fondée Décision rendue le 4 août 2000
PR-99-053	Rolls-Royce Industries Canada Inc.	Le 22 mars 2000	Plainte fondée Décision rendue le 7 avril 2000
PR-2000-001	APS-Artian Professional Services	Le 7 avril 2000	Refus d'enquêter, aucune indication d'une infraction Refus d'enquêter, n'est pas une entité spécifique
PR-2000-002	FirstMark Technologies Ltd.	Le 18 avril 2000	Décision rendue le 3 août 2000 Plainte fondée
PR-2000-003	Canadian Computer Rentals	Le 18 avril 2000	Décision rendue le 20 juillet 2000 Plainte non fondée
PR-2000-004	Kildonan Associates Inc.	Le 25 avril 2000	Décision rendue le 11 septembre 2000 Plainte fondée en partie
PR-2000-005	Radiant Point Inc.	Le 27 avril 2000	Refus d'enquêter, ne vise pas un contrat spécifique
PR-2000-006	Arp Services	Le 11 mai 2000	Décision rendue le 22 août 2000 Plainte non fondée
PR-2000-007	FMD International Inc.	Le 18 mai 2000	Décision rendue le 6 septembre 2000 Plainte fondée
PR-2000-008	Brookfield LePage Johnson Controls Facility Management Services	Le 25 mai 2000	Décision rendue le 18 août 2000 Plainte non fondée
PR-2000-009	Crain-Drummond Inc.	Le 29 mai 2000	Décision rendue le 18 août 2000 Plainte non fondée

Examens judiciaires des décisions concernant les marchés publics

Le tableau 2 dresse une liste des décisions concernant les marchés publics interjetées en appel devant la Cour fédérale du Canada au cours de l'exercice.

additionnels occasionnés par l'exploitation de deux différentes flottes d'hélicoptères.

Après un examen des preuves fournies dans la plainte, le Tribunal a décidé de ne pas ouvrir d'enquête relativement à cette plainte parce qu'elle n'avait pas révélé une preuve raisonnable que le Ministère avait agi contrairement à l'ACI. L'ACI n'exige pas que le gouvernement utilise un certain type de méthode de sélection et rien dans l'ACI n'oblige le gouvernement à acheter un produit d'un type particulier ou d'une marque spécifique simplement parce qu'il possède déjà un tel produit ou une telle marque. De plus, le marché était à l'étape de « lettre d'intérêt » et, par conséquent, les spécifications finales et les derniers critères de sélection n'avaient pas encore été établis.

Après un examen minutieux, le Tribunal a déterminé que le Ministère n'avait pas agi contrairement aux dispositions de l'ACI lorsqu'il avait déclaré la soumission de K-Lor non conforme. Par conséquent, le Tribunal a déterminé que la plainte n'était pas fondée.

Le Tribunal a rendu une décision à l'égard d'une plainte déposée par AT&T Canada Corp. (AT&T) concernant une invitation à soumissionner du Ministère pour la prestation de services en mode de transfert asynchrone pour le ministère de l'Industrie.

AT&T a allégué que, en violation des dispositions de l'ALENA, de l'ACI et de l'AMMP, le Ministère n'avait pas appliqué la procédure d'appel d'offres d'une manière non discriminatoire.

Dans son analyse, le Tribunal a insisté sur le fait que le chapitre cinq de l'ACI vise à établir un cadre qui assurera à tous les fournisseurs canadiens un accès égal aux marchés publics. Le Tribunal a déterminé que la discrimination exercée à l'encontre des fournisseurs est contraire à l'ACI, même si la discrimination n'est pas fondée sur la province ou sur la région. Le Tribunal n'a pas déterminé si l'ALENA et l'AMMP s'appliquaient au marché en cause.

Après avoir examiné les éléments de preuve et les arguments présentés par les parties et avoir étudié l'objet de la plainte, le Tribunal a jugé que certaines dispositions de la DP, portant sur l'ajout de frais aux propositions des soumissionnaires non titulaires, étaient, quant à leurs effets, discriminatoires. Par conséquent, le Tribunal a déterminé que l'ACI avait été violée et que la plainte était fondée. Le Tribunal a recommandé que, pour évaluer les propositions reçues en réponse à cette invitation à soumissionner et pour déterminer le soumissionnaire retenu qu'il convenait de recommander aux fins de l'adjudication du contrat, le Ministère ne tienne pas compte des conséquences des effets qui avaient été identifiés comme étant contraires à l'ACI.

Le Tribunal a rendu une décision concernant une plainte déposée par E.H. Industries Limited (EHI) au sujet d'une invitation à soumissionner du Ministère au nom du ministère de la Défense nationale. L'appel d'offres portait sur la fourniture de 28 véhicules de base, des modifications de navires connexes et un appui sur place à long terme en vue de remplacer les hélicoptères CH124 Sea King actuels.

EHI a prétendu que le Ministère avait fait des distinctions injustes à son égard et à l'égard de son hélicoptère, le Cormorant, par son choix d'un critère de sélection « conforme la moins-disante » et en omettant de tenir compte des frais

Plainte fondée
(27 novembre 2000)
Décision :

PR-2000-024
AT&T Canada

Décision :
Enquête non ouverte/
aucune indication d'une
infraction
(30 octobre 2000)

PR-2000-026
E.H. Industries

mesures recommandées. Vingt-deux autres plaintes étaient à l'étude à la fin du exercice. Ces activités sont résumées dans le tableau 1 qui figure à la fin du présent chapitre.

Parmi les causes entendues par le Tribunal dans le cadre de ses fonctions relatives à l'examen des marchés publics, certaines décisions ont été marquées du fait de l'importance juridique des causes. Des sommaires ont été préparés à titre d'information et n'ont aucun statut juridique.

Le Tribunal a rendu une décision à l'égard de deux plaintes déposées par TELUS Integrated Communications Inc. (TELUS) concernant un appel d'offres du Service correctionnel du Canada (SCC) pour l'installation et l'exploitation, dans chaque établissement correctionnel au Canada, de logiciels et de matériel téléphonique ainsi que du service téléphonique connexe (Réseau téléphonique des détenus).

TELUS a allégué 1) que, en violation de dispositions de l'ACI, le SCC avait choisi un fournisseur dont la proposition ne respectait pas les conditions obligatoires précisées dans la demande de propositions (DP); 2) que la DP ne précisait pas clairement les conditions du marché public et les critères devant être appliqués dans l'évaluation des soumissions et les méthodes de pondération et d'évaluation de critères; 3) que le marché public était discriminatoire à l'égard des fournisseurs potentiels en ce sens que tous les fournisseurs potentiels n'avaient pas accès à certains renseignements critiques concernant les exigences du SCC.

Après avoir examiné les éléments de preuve et les arguments présentés par les parties et avoir étudié l'objet des plaintes, le Tribunal a déterminé que les plaintes étaient en partie fondées. Le Tribunal a recommandé au SCC d'accorder le marché à TELUS, le seul soumissionnaire conforme dans le cadre de cet appel d'offres.

Le Tribunal a rendu une décision à l'égard d'une plainte déposée par K-Lor Contractors Services Ltd. (K-Lor) concernant un appel d'offres du ministère des Travaux publics et des Services gouvernementaux (le Ministère) pour la prestation de services de mise en place d'un lieu d'enfouissement sécuritaire à Argentina (Terre-Neuve).

K-Lor a allégué que, en violation de l'ACI, le Ministère avait incorrectement rejeté sa soumission parce qu'elle n'avait pas fourni le document d'attestation de la visite obligatoire de l'emplacement qui était requis et qu'elle a prétendu avoir inclus dans ses documents de soumission.

TELUS Integrated Communication

PR-2000-017 et
PR-2000-035

Décision :

Plaintes fondées en
partie
(2 novembre 2000)

K-Lor Contractors Services

PR-2000-023

Décision :

Plainte non fondée
(23 novembre 2000)

Sommaire de
décisions
choisies

Au cours de l'exercice, le Tribunal a rendu 28 décisions écrites faisant état de ses conclusions et recommandations à l'égard de 28 plaintes relatives aux marchés publics. En ce qui concerne 13 des 28 décisions écrites, il a été déterminé que la plainte était fondée en totalité ou en partie. Dans ces causes, divers recours ont été accordés sous forme de remboursement des coûts ou de

PLAINTES RÉGLÉES PAR LES PARTIES		1999-2000	2000-2001
Régles entre les parties		-	-
Retirées		4	5
Abandonnées pendant le dépôt		-	1
Total partiel		4	6
PLAINTES QUI N'ONT PAS FAIT L'OBJET D'ENQUÊTES POUR DES RAISONS DE PROCÉDURE			
Absence de compétence		6	6
Déposées en retard		9	8
Aucun fondement valable		13	17
Total partiel		28	31
PLAINTES TRANCHÉES SUR LE FOND			
Plaintes non fondées		13	15
Plaintes fondées		14	13
Total partiel		27	28
PLAINTES À L'ÉTUDE		9	22
TOTAL		68	87

Le Tribunal rend ensuite une décision, qui peut renfermer des recommandations à l'égard de l'institution fédérale (nouvel appel d'offres, réévaluation des soumissions ou versement d'une indemnité) et un remboursement des frais entraînés par la partie plaignante qui a gain de cause relativement au dépôt de sa contestation de l'offre ou à la préparation de sa soumission. L'institution fédérale, ainsi que les autres parties et personnes intéressées, est avisée de la décision du Tribunal. Les recommandations que le Tribunal fait dans sa décision doivent être mises en œuvre dans toute la mesure du possible.

Sommaire des activités liées à l'examen des marchés publics

CHAPITRE VI

EXAMEN DES MARCHÉS PUBLICS

Les fournisseurs peuvent contester les décisions concernant la passation des marchés publics du gouvernement fédéral qui n'ont pas été faites conformément aux exigences du chapitre 10 de l'ALÉNA, du chapitre cinq de l'ACI, de l'AMP ou de l'*Accord sur l'achat de matériel de télécommunication*. Les parties de ces accords qui traitent des contestations des offres sont entrées en vigueur le 1^{er} janvier 1994, le 1^{er} juillet 1995, le 1^{er} janvier 1996 et le 1^{er} novembre 2000, respectivement.

Les fournisseurs potentiels, qui estiment ne pas avoir été traités équitablement au cours de l'appel d'offres, de l'évaluation des soumissions ou de l'adjudication des contrats pour un marché spécifique, peuvent déposer une plainte officielle auprès du Tribunal. Un fournisseur potentiel est invité à soulever, dans un premier temps, son opposition auprès de l'institution fédérale compétente. Si le fournisseur n'est pas satisfait de la réponse reçue ou s'il préfère s'adresser directement au Tribunal, il peut alors déposer une plainte auprès de ce dernier dans le délai prescrit.

Une fois la plainte déposée, le Tribunal l'examine en fonction des critères établis à cet effet. Si la plainte présente des lacunes, la partie plaignante est invitée à les corriger dans le délai prescrit. Si le Tribunal décide d'effectuer une enquête, il envoie à l'institution fédérale et à toutes les autres parties intéressées un avis de plainte officiel. Cet avis est également publié dans *Marchés publics* et dans la *Gazette du Canada*. Si le contrat en cause n'a pas encore été adjugé, le Tribunal peut ordonner à l'institution fédérale d'en reporter l'adjudication en attendant qu'il ait statué sur la plainte, à moins que l'institution fédérale certifie que l'acquisition est urgente ou qu'un retard pourrait être contraire à l'intérêt public.

Après avoir reçu une copie de la plainte, l'institution fédérale compétente dépose un rapport de l'institution fédérale (RLF) pour répondre aux allégations. Une copie du RLF est envoyée à la partie plaignante, qui a sept jours pour présenter ses observations. Le Tribunal transmet ces observations à l'institution fédérale et à tout intervenant.

Une enquête, qui peut comprendre un interrogatoire des particuliers et l'examen des dossiers et documents, peut être menée par le personnel du Tribunal. Les résultats de l'enquête sont versés dans un rapport d'enquête du personnel, qui est envoyé aux parties afin d'obtenir leurs commentaires. Lorsque cette étape de l'enquête est terminée, le Tribunal étudie les renseignements recueillis et décide s'il y a lieu de tenir une audience.

Recommandations en vigueur (suite)

Demande n° Réexamen n°	Expiration n° (demande initiale)	Demanderesse/Intrant textile	Numéro(s) tarifaire(s)/Décret	Durée
TR-98-004 TR-98-005 et TR-98-006		Ladcal Investments Ltd., s/n Pintar Manufacturing Nour Trading House et T.S. Simms and Company Limited	5806.10.20	Indéterminée
TR-98-007		Caulfield Apparel Group Ltd.	5208.43.30	Indéterminée
TR-98-016		Vêtements Peerless Inc.	5407.93.20	Indéterminée
TR-98-017		Jones Apparel Group Canada Inc.	5408.32.50 5408.33.20 5408.34.20	Indéterminée
TR-98-019		Les Vêtements de sports Tribal Inc.	5209.12.30 5209.22.20 5209.32.10	Indéterminée
TR-99-002		Albany International Canada Inc.	5404.10.20	Indéterminée
TR-99-004		Vêtements Peerless Inc.	5112.11.20 5112.11.30 5112.19.20 5112.19.30	Indéterminée
TR-99-006		Coloride Inc.	5402.41.15	Indéterminée
TA-98-001	TE-97-004 (TR-95-009)	Certains tissus teints de rayonne et de polyester	5408.31.20 5408.32.30	Indéterminée
TA-98-002	TE-97-003 (TR-94-009)	Tissu VINEX FR-9B	5512.99.10	Indéterminée
TA-98-003	TE-98-001 (TR-95-014)	Velours de chaîne tissés coupés	5801.35.10	Indéterminée
TA-98-004	TE-98-002 (TR-94-002 et TR-94-002A)	Certains fils produits par filature à anneaux	5205.14.20 5205.15.20 5205.26.20 5205.27.20 5205.28.20 5205.35.20 5205.46.20 5205.47.20 5205.48.20 5206.14.10 5206.15.10 5206.24.10 5206.25.10 5509.53.10 5509.53.20 5509.53.30	Trois ans

Recommandations en vigueur (suite)

Demande n° Réexamen n°	Expiration n° (demande initiale)	Demanderesse/Intrant textile	Numéro(s) tarifaire(s)/Décret	Durée
TR-96-003	Venture III Industries Inc.	5407 61 92	Indéterminée	
TR-96-004	Action International Inc.	5906 99 21	Indéterminée	
TR-96-006	Alpine Joe Sportswear Ltd.	C.P. 1998-1118	Six ans	
TR-96-008 et TR-96-010 à	Les Collections Shan Inc.	C.P. 1997-1668	Cinq ans	
TR-96-013				
TR-97-001	Jones Apparel Group Canada Inc.	5407 91 10	Indéterminée	
		5407 92 20		
		5407 93 10		
		5408 21 30		
		5408 22 40		
		5408 23 20		
		5408 31 30		
		5408 32 40		
		5408 33 10		
TR-97-002 et TR-97-003	Manufacture Universelle Inc.	5208 43 30	Indéterminée	
		5513 41 20		
TR-97-006	Vêtements Peerless Inc.	5407 51 30	Indéterminée	
		5903 90 22		
		5903 90 23		
		5903 90 24		
		5903 90 24		
		6002 43 40		
		6002 43 50		
TR-97-004, TR-97-007, TR-97-008 et TR-97-010	Blue Bird Dress of Toronto Ltd.	5407 51 20	Indéterminée	
		5407 52 20		
		5407 61 94		
		5407 69 20		
TR-97-011	Australian Outback Collection (Canada) Ltd.	5209 31 20	Indéterminée	
TR-97-012	Ballin Inc.	5407 93 30	Indéterminée	
		5516 23 20		
TR-97-014	Les Industries Lenrod Ltée	5603 93 40	Indéterminée	
TR-97-015, TR-97-016 et TR-97-020	Helly Hansen Canada Ltd.	5903 20 24	Indéterminée	
TR-98-001	Cambridge Industries	5608 19 20	Indéterminée	
TR-98-002	Distex Inc.	6002 92 20	Indéterminée	

Recommandations en vigueur (suite)

Demande n°/ Réexamen n°	Expiration n° (demande initiale)	Demanderesse/Intrant textile	Numéro(s) tarifaire(s)/Décret	Durée
TR-95-013A	Doubletex	5208.11.30	Indéterminée	
TR-95-036	Canadian Mill Supply Co. Ltd.	5208.21.20 5209.22.10 5209.21.20 5209.19.30 5209.12.20 5209.11.30 5208.29.20 5208.23.10 5208.22.20 5208.21.40 5208.19.30 5208.13.20 5208.12.40	Indéterminée	
TR-95-037	Bonneterie Paris Star Inc.	5408.24.11 5408.24.91 5408.34.10 5516.14.10 5516.24.10	Indéterminée	
TR-95-051	Camp Mate Limited	5407.41.10 5516.24.10	Indéterminée	
TR-95-053 et TR-95-059	Les Industries Majestic (Canada) Liée et Cauterild Appareil Group Ltd.	5802.11.10 5802.19.10 5802.19.20	Indéterminée	
TR-95-056	Sealy Canada Ltd.	3921.19.10	Indéterminée	
TR-95-057 et TR-95-058	Doubletex	5407.51.10 5407.61.92 5407.69.10 5515.11.10 5516.21.10 5516.91.10	Indéterminée	
TR-95-060	Triple M Fiberglass Mfg. Ltd.	7019.59.10	Indéterminée	
TR-95-061	Camp Mate Limited	6002.43.30	Indéterminée	
TR-95-064 et TR-95-065	Lady Americana Sleep Products Inc. et Ameublement et ran Liée	6002.43.60	Indéterminée	

TABLEAU 3

Recommandations d'allègement tarifaire en vigueur

Demande n°/ Réexamen n°	Expiration n° (demande initiale)	Demanderesse/Intrant textile	Numéro(s) tarifaire(s)/Décret	Durée
TR-94-001		Les Industries Canatex (division de Tricot Richelieu Inc.)	5402.41.12	Indéterminée
TR-94-004		Woods Canada Limited	5208.52.10	Indéterminée
TR-94-010		Palliser Furniture Ltd.	5806.20.10	Indéterminée
TR-94-012		Vêtements Peerless Inc.	5309.29.20	Indéterminée
TR-94-013 et TR-94-016		MVG Apparel Corp.	5208.42.20 5208.43.20	Indéterminée
TR-94-017 et TR-94-018		Elite Counter & Supplies	9943.00.00 5513.32.10 5513.31.10 5513.33.10	Indéterminée
TR-95-003		Landes Canada Inc.	5603.12.20 5603.13.20 5603.14.20 5603.91.20 5603.92.20 5603.93.20 5603.94.20	Indéterminée
TR-95-004		Lingerie Bright Sleepwear (1991) Inc.	5208.52.20	Indéterminée
TR-95-005		Lingerie Bright Sleepwear (1991) Inc.	5513.11.10	Indéterminée
TR-95-009		Vêtements Peerless Inc.	5408.21.10	Indéterminée
TR-95-010 et TR-95-034		Freed & Freed International Ltd. et Fen-nell Fashion Inc.	5111.19.10 5408.22.21 5408.22.30	Indéterminée
TR-95-011		Louben Sportswear Inc.	5408.31.10	Indéterminée
TR-95-012		Teinturerie Perfect Canada Inc.	5509.32.10	Indéterminée

TABLEAU 2

Règlement d'une demande de nouvel examen entre le 1^{er} avril 2000 et le 31 mars 2001

Demande n°	Demande de nouvel examen faite par	Intrant textile	Date du règlement	Recommandation	
				Recommandation du 4 février 2000 (TR-99-003) confirmée	
TR-99-003A	Doubtex	Tissu	Le 5 octobre 2000		

TABLEAU 1

Règlement des demandes d'allègement tarifaire entre le 1^{er} avril 2000 et le 31 mars 2001

Demande n°	Demanderesse	Intrant textile	Date du règlement	État/recommandations
TR-99-004	Vêtements Peerless Inc.	Tissu	Le 28 juillet 2000	Allègement tarifaire pour une période indéterminée
TR-99-005	Distex Inc.	Tissu	Le 4 avril 2000	Allègement tarifaire pour une période indéterminée
TR-99-006	Coloride Inc.	Fill	Le 27 juillet 2000	Allègement tarifaire pour une période indéterminée
TR-99-007	Soltex Textiles Canada Inc.	Non-tissé	Le 25 juillet 2000	Dossier fermé
TR-99-008	JMJ Fashions Inc.	Tissu	Le 27 octobre 2000	Allègement tarifaire pour une période indéterminée
TR-2000-001	Vêtements Peerless Inc.	Tissu	Le 24 janvier 2001	Allègement tarifaire pour une période indéterminée
TR-2000-002	Les Industries Majestic (Canada) Ltée	Tissu	Le 12 janvier 2001	Allègement tarifaire pour une période indéterminée
TR-2000-003	Tantalum Mining Corporation of Canada Limited	Tissu	Le 21 mars 2001	Allègement tarifaire pour une période indéterminée
TR-2000-004	Ballin Inc.	Tissu	Le 9 mars 2001	Allègement tarifaire pour une période indéterminée
TR-2000-005	Vêtements Peerless Inc.	Tissu	En cours	
TR-2000-006	Doubletex	Tissu	Demande à l'étude	
TR-2000-007	Scapa Tapes North America Ltd.	Tissu	Demande à l'étude	
TR-2000-008	Scapa Tapes North America Ltd.	Tissu	Demande à l'étude	

Le Tribunal a recommandé au ministre des Finances d'accorder un allègement tarifaire pour une période indéterminée sur les importations du fil de filaments simple, uniquement de nylon, de la sous-position n° 5402.41, devant servir à la production de mèches.

Le Tribunal a observé que, d'après les renseignements au dossier, il semble improbable que Plastifil, un fabricant canadien, puisse, dans un avenir prévisible, vendre une quantité déterminée de fil à Coloride, même si les droits de douane devaient demeurer en vigueur. En outre, le Tribunal a fait remarquer que Plastifil semble s'intéresser davantage à développer d'autres marchés tels celui du fil de canne à pêche et du fil à coudre pour rentabiliser son équipement d'extrusion. Par conséquent, le Tribunal était d'avis que les coûts limités que la branche de production nationale pourrait éventuellement devoir supporter en raison de l'allègement tarifaire seraient plus que compensés par les gains à venir pour Coloride.

Le Tribunal a recommandé au ministre des Finances d'accorder l'allègement tarifaire, pour une période indéterminée, sur les importations du tissu sergé à droite 3/2 avec une oblique très inclinée d'environ 63 degrés, teint, uniquement de filaments de polyester simples non texturés, d'une torsion de plus de 1 250 tours par mètre dans la chaîne et deux fils d'une torsion « S » suivis de deux fils d'une torsion « Z » alternés dans la trame, d'un poids n'exceedant pas 250 g/m², de la sous-position n° 5407.61, devant servir à la confection de blouses, manteaux, pantalons, jupes et robes pour femmes.

Le Tribunal voyait peu de coûts associés à l'octroi de l'allègement tarifaire demandé puisqu'il ne considérait pas que les tissus que produit présentement Consoltex au pays étaient substituables au tissu en question. Quant au tissu présentement mis au point par Consoltex, le Tribunal a fait remarquer que la capacité de cette dernière d'approvisionner le marché et l'acceptation du tissu susmentionné par le marché n'avaient pas encore été démontrées. Le Tribunal ne pouvait donc attribuer de coûts que Consoltex pourrait devoir absorber et a conclu que l'allègement tarifaire procurerait un gain annuel à MJL de plus de 150 000 \$.

*Recommandation :
Allègement tarifaire
indéterminée
pour une période
(27 octobre 2000)*

JMJ Fashions
TR-99-008

*Recommandation :
Allègement tarifaire
indéterminée
pour une période
(27 juillet 2000)*

Coloride
TR-99-006

La mise en œuvre de recommandations du Tribunal est effectuée en ajoutant des nouveaux numéros tarifaires au *Tarif des douanes*. Au cours de l'exercice, ces numéros tarifaires visaient des importations d'une valeur (estimative) de 23 millions de dollars et ont permis un allègement tarifaire d'une valeur (estimative) de 10 p. 100 par rapport à 1999-2000.

Un sommaire d'un échantillon représentatif des recommandations que le Tribunal a publiées au cours de l'exercice suit.

Vêtements Peerless

TR-99-004

Recommandation :
Allègement tarifaire
pour une période
indéterminée
(28 juillet 2000)

Le Tribunal a recommandé au ministre des Finances d'accorder un allègement tarifaire pour une période indéterminée sur les importations de :
1) tissus, faits uniquement de laine peignée d'un diamètre de fibre moyen de 17,5 micromètres ou moins et de poils fins peignés, titrant 100 décitex ou moins par fil simple, contenant au moins 7 p. 100 en poids de poils fins, tel que certifié par l'exportateur, d'un poids d'au moins 140 g/m² mais n'excédant pas 300 g/m² de la sous-position n° 5112.11 ou 5112.19, devant servir à la confection de complets, de vestons de type complet, de blazers, de gilets et de pantalons pour hommes; 2) tissus, faits uniquement de laine peignée et de poils fins peignés, contenant au moins 15 p. 100 en poids de poils fins, tel que certifié par l'exportateur, d'un poids d'au moins 140 g/m² mais n'excédant pas 300 g/m² de la sous-position n° 5112.11 ou 5112.19, devant servir à la confection de vêtements de sport pour hommes.

Dans son rapport, le Tribunal a fait observer que la capacité de Peerless de s'approvisionner à l'étranger en tissus de laine et de poils fins a contribué à l'énorme succès des complets faits de tissus légers, qui se portent toute l'année. De plus, le Tribunal a fait observer que Cley & Tinker, un fabricant canadien de tissus peignés, n'exploite pas le créneau du marché des mélanges de laine très fine et de poils fins, mais plutôt le marché plus vaste des tissus de laine. Cela a porté le Tribunal à croire que Cley & Tinker n'était pas, ni ne serait, dans un avenir prévisible, en mesure de produire et de fournir, en quantités commerciales, les tissus de laine très fine et de poils fins dont Peerless a besoin et que l'allègement tarifaire sur ces tissus assurerait des gains économiques nets au Canada. Quant aux vestons de sport, le Tribunal a fait observer que les tissus devant servir à cette utilisation finale sont en général faits de fils plus grossiers et que leur teneur en poils fins est en général plus élevée que dans le cas des tissus devant servir à la confection de complets. Le Tribunal a fait observer que Cley & Tinker avait, en production ou à l'étape de la mise au point, certains tissus contenant de 10 à 20 p. 100 de poils fins devant servir à la confection de vestons. Cependant, ces tissus ne représentaient qu'une très faible proportion de l'exploitation globale de Cley & Tinker et n'étaient disponibles que dans une gamme limitée de motifs et de coloris. Par conséquent, le Tribunal a recommandé que l'allègement tarifaire soit accordé pour ce type de tissu puisqu'il assurerait des gains économiques nets au Canada, mais à appliqué un seuil de 15 p. 100 en regard au contenu minimal de poils fins dans ces tissus.

recommander le renouvellement, la modification ou l'annulation du décret. Une demande de modification ou d'annulation du décret doit préciser en quoi les circonstances justifiant cette demande ont changé.

Lorsque le ministre des Finances a rendu un décret sur un allègement tarifaire pour une période déterminée, le Tribunal publiera, avant la date d'expiration, un avis officiel selon lequel l'allègement tarifaire prévu par le décret ne sera plus en vigueur à moins que le Tribunal ne fasse une recommandation de prorogation de l'allègement tarifaire et que le ministre des Finances ne mette cette dernière en œuvre. L'avis invite les parties intéressées à déposer des exposés pour ou contre la prorogation de l'allègement tarifaire.

Si le Tribunal ne reçoit aucune opposition à la prorogation de l'allègement tarifaire, au moment où le Tribunal reçoit les exposés et les renseignements appuyant la demande de prorogation de l'allègement tarifaire, il peut décider de recommander la prorogation de l'allègement tarifaire. Réciproquement, si aucune demande de prorogation de l'allègement tarifaire n'est reçue, le Tribunal peut décider de recommander l'annulation de l'allègement tarifaire. S'il semble justifié d'entreprendre un réexamen plus exhaustif, le Tribunal effectuera une enquête afin de considérer si tous les facteurs pertinents qui ont dicté la prorogation de l'allègement tarifaire s'appliquent encore et si la prorogation de l'allègement tarifaire dans les conditions actuelles continue d'assurer des gains économiques nets au Canada.

Conformément au mandat confié au Tribunal d'enquêter sur les demandes présentées par les producteurs canadiens qui souhaitent obtenir des allègements tarifaires sur les intrants textiles importés dans le cadre de leurs activités de fabrication, le Tribunal a présenté au ministre des Finances, le 31 janvier 2001, son sixième rapport de situation annuel sur le mécanisme d'enquête. Ce rapport portait sur la période allant du 1^{er} octobre 1999 au 30 septembre 2000.

Au cours de l'exercice, le Tribunal a transmis 8 rapports au ministre des Finances concernant 8 demandes d'allègement tarifaire. En outre, le Tribunal a transmis 1 rapport à la suite d'un réexamen d'une recommandation qui a été suspendu, dont 1 faisait l'objet d'une enquête. Le tableau 1 à la fin du présent chapitre résume ces activités.

À la fin de l'exercice, le gouvernement avait mis en œuvre 75 recommandations faites par le Tribunal, dont 68 font toujours l'objet de décrets sur des allègements tarifaires. Le tableau 3 résume les recommandations mises en œuvre à ce jour.

Examen relatif à l'expiration

Rapport de situation annuel

Recommandations présentées au cours de l'exercice financier

Recommandations en vigueur

Demande de réexamen	Recommandations au Ministre
<p>Lorsque le ministre des Finances a rendu un décret sur un allègement tarifaire conformément à une recommandation du Tribunal, certains producteurs nationaux peuvent demander au Tribunal d'ouvrir une enquête afin de</p>	<p>Le Tribunal présente habituellement ses recommandations motivées au ministre des Finances dans les 120 jours suivant la date de l'ouverture de l'enquête. Dans les cas exceptionnels, lorsque le Tribunal détermine qu'il est en présence d'une situation d'urgence, il présente ses recommandations dans le délai plus bref qu'il juge approprié. Le Tribunal ne recommandera la réduction ou la suppression des droits de douane sur un intrant textile que si l'allègement tarifaire demandé assure des gains économiques nets maximaux au Canada.</p> <p>Lorsque des renseignements confidentiels sont fournis au Tribunal, ceux-ci sont protégés par les dispositions pertinentes de la Loi sur le TCCF. Par conséquent, le Tribunal ne distribue de renseignements confidentiels qu'aux conseillers qui agissent au nom d'une partie et qui ont déposé un acte de déclaration et d'engagement.</p> <p>Le Tribunal présente habituellement ses recommandations motivées au ministre des Finances dans les 120 jours suivant la date de l'ouverture de l'enquête. Dans les cas exceptionnels, lorsque le Tribunal détermine qu'il est en présence d'une situation d'urgence, il présente ses recommandations dans le délai plus bref qu'il juge approprié. Le Tribunal ne recommandera la réduction ou la suppression des droits de douane sur un intrant textile que si l'allègement tarifaire demandé assure des gains économiques nets maximaux au Canada.</p> <p>Pour préparer un rapport d'enquête du personnel, le personnel du Tribunal recueille de l'information au moyen de visites des installations et de questionnaires. Les renseignements obtenus de la demanderesse et des parties intéressées, comme un fournisseur national de l'intrant textile, servent à déterminer si l'allègement tarifaire demandé assurera des gains économiques nets maximaux au Canada.</p> <p>Habituellement, une audience publique n'est pas nécessaire, et le Tribunal statue sur l'affaire sur la foi du dossier complet, y compris la demande, le rapport d'enquête du personnel et tous les exposés et éléments de preuve déposés auprès du Tribunal.</p> <p>La procédure élaborée pour le déroulement des enquêtes du Tribunal prévoit la pleine participation de la demanderesse et de toutes les parties intéressées. Une partie, autre que la demanderesse, peut déposer des observations, y compris des éléments de preuve, en réponse au dossier complet de la demande, au rapport d'enquête du personnel et à tout renseignement fourni par un ministre ou un organisme gouvernemental. La demanderesse peut ensuite déposer des observations auprès du Tribunal en réponse au rapport d'enquête du personnel et à tout renseignement fourni par un ministre ou un organisme gouvernemental ou par toute autre partie.</p> <p>Lorsque des renseignements confidentiels sont fournis au Tribunal, ceux-ci sont protégés par les dispositions pertinentes de la Loi sur le TCCF. Par conséquent, le Tribunal ne distribue de renseignements confidentiels qu'aux conseillers qui agissent au nom d'une partie et qui ont déposé un acte de déclaration et d'engagement.</p>

L'allègement tarifaire que le Tribunal peut recommander au ministre des Finances varie de l'élimination ou de la réduction des tarifs sur une ou plusieurs lignes tarifaires, totales ou partielles, à des dispositions tarifaires applicables à un textile ou à une utilisation finale déterminée. Seulement dans le cas de demandes d'allègement tarifaire sur les intrants textiles utilisés dans la confection de maillots de bain, de vêtements de plage coordonnés et d'accessoires coordonnés pour dames, la recommandation peut-elle être applicable à une entreprise. La recommandation peut porter sur un allègement tarifaire soit pour une période spécifique, soit pour une période indéterminée. Cependant, le Tribunal ne recommande que des allègements tarifaires pouvant être mis en application de manière économique.

Les producteurs nationaux demandant un allègement tarifaire doivent déposer une demande auprès du Tribunal. Les producteurs doivent déposer, avec leur demande d'allègement tarifaire, des échantillons de l'intrant textile visé ou une décision nationale des douanes de l'ADRC sur l'intrant. Si le Tribunal détermine que le dossier de la demande est complet, il effectue une enquête afin de déterminer s'il doit recommander un allègement tarifaire.

Sur réception d'une demande d'allègement tarifaire, et avant de procéder à l'ouverture d'une enquête, le Tribunal fait paraître, sur son site Web, un bref avis de réception de la demande. La notification d'une demande doit être faite au moins 30 jours avant l'ouverture de l'enquête.

Une telle façon de faire est conçue pour augmenter la transparence, permettre de déceler l'existence de lacunes dans la demande, éviter les enquêtes inutiles, donner à l'industrie textile nationale l'occasion de communiquer avec la demanderesse et de convenir d'une source nationale raisonnable d'approvisionnement, informer les autres utilisateurs d'intrants textiles ou substituables ainsi que préparer les producteurs nationaux à répondre aux questionnaires d'enquête éventuels, et donner aux associations un délai préalable de planification et de consultation de leurs membres.

Lorsque le Tribunal estime que le dossier de la demande est complet, il ouvre une enquête. Un avis d'ouverture d'enquête est envoyé à la demanderesse, à toutes les parties intéressées connues et tout ministère ou organisme gouvernemental pertinent, comme le ministère des Affaires étrangères et du Commerce international, le ministère de l'Industrie, le ministère des Finances et l'ADRC. L'avis est aussi publié dans la *Gazette du Canada*.

Dans une enquête, la liste des parties intéressées comprend les producteurs nationaux, certaines associations et d'autres personnes qui sont autorisées à être entendues par le Tribunal en raison du fait que les recommandations du Tribunal

Types d'allègement possibles

Procédure

Dépôt et notification d'une demande

Enquêtes

CHAPITRE V

ENQUÊTES SUR LES QUESTIONS ÉCONOMIQUES, COMMERCIALES ET TARIFAIRES, ET LES MESURES DE SAUVEGARDE

Introduction

La Loi sur le TCCB renferme des dispositions générales aux termes desquelles le gouvernement ou le ministre des Finances peut demander au Tribunal de faire enquête sur des questions économiques, commerciales ou tarifaires. Dans le cadre d'une enquête, le Tribunal agit à titre consultatif, avec le mandat de faire des recherches, de recevoir les exposés et les observations, de trouver les faits, de tenir des audiences publiques et de présenter un rapport au gouvernement ou au ministre des Finances accompagné, au besoin, de recommandations.

Saisine sur les textiles

Conformément au mandat que lui a confié le ministre des Finances le 6 juillet 1994, et qui a été modifié les 20 mars et 24 juillet 1996, le 26 novembre 1997 ainsi que le 19 août 1999, le Tribunal doit enquêter sur les demandes présentées par les producteurs nationaux qui souhaitent obtenir des allègements tarifaires sur les intrants textiles importés dans le cadre de leurs activités de fabrication, puis formuler des recommandations au ministre des Finances concernant ces demandes.

Portée de la saisine

Un producteur national peut demander un allègement tarifaire sur un intrant textile importé qu'il utilise, ou qu'il compte utiliser, dans ses activités de production. Les intrants textiles pour lesquels un allègement tarifaire peut être demandé sont les fibres, les fils et les tissus visés aux Chapitres 51, 52, 53, 54, 55, 56, 58, 59 et 60, certains monofilaments ou bandes et les combinaisons de textile et de plastique visés au Chapitre 39, les fils de caoutchouc et les combinaisons de textile et de caoutchouc visés au Chapitre 40, et les produits textiles de fibres de verre visés au Chapitre 70 de l'annexe du *Tarif des douanes*. Depuis le 24 juillet 1996 et au moins jusqu'au 1^{er} juillet 2002, les fils suivants sont exclus de la portée de la saisine sur les textiles :

Fils à tricoter, constitués uniquement de fibres de coton ou uniquement de fibres discontinues de coton et de polyester, titrant plus de 190 décitex, du Chapitre 52 ou de la sous-position n° 5509.53, autres que ceux utilisés pour confectionner des chandails, présentant une lisière finie horizontale non cousue et dont les surfaces extérieures sont essentiellement constituées de 9 mailles ou moins par 2 cm (12 mailles ou moins par pouce) dans le sens horizontal.

TABLEAU 3

Décisions d'appels rendues par la Cour fédérale du Canada entre le 1^{er} avril 2000 et le 31 mars 2001

Appel n°	Appelante	Dossier de la Cour fédérale n°	Décision	Date
2983	Les Industries Vogue Ltée.	T-1270-92	Admis	Le 19 mai 2000
AP-91-201	152633 Canada Inc./Sako Auto Leasing	T-1686-93	Abandonné	Le 15 novembre 2000
AP-93-274 et AP-93-294	Continuous Colour Coat Limited	T-2831-94	Admis	Le 5 juin 2000
AP-93-294	Continuous Colour Coat Limited	A-854-97	Admis en partie	Le 3 mai 2000
AP-95-230	Euro-Line Appliances	A-323-97	Rejeté	Le 17 mai 2000
AP-95-261 et AP-95-263	Charley Originals Ltd., Division of Algo Group Inc. et Mr. Jump Inc., Division of Algo Group Inc.	A-528-97	Rejetés	Le 19 mai 2000
AP-96-117	Yves Ponroy Canada	A-97-98	Rejeté	Le 24 juillet 2000
AP-96-208 et AP-97-009	Philips Electronics Ltd.	A-230-98	Rejetés	Le 16 mai 2000
AP-97-002 et AP-97-058	Flora Manufacturing & Distributing Ltd.	A-633-98 et A-617-98	Rejetés	Le 24 juillet 2000
AP-97-010	Hilary's Distribution Ltd.	A-632-98	Rejeté	Le 24 juillet 2000
AP-97-029	Entrelec Inc.	A-755-98	Admis	Le 14 septembre 2000
AP-97-052	Flora Manufacturing & Distributing Ltd.	A-720-98	Rejeté	Le 24 juillet 2000
AP-97-100	Brother International Corporation (Canada) Ltd.	A-81-99	Rejeté	Le 27 septembre 2000
AP-98-007 et AP-98-010	Richards Packaging Inc. et Duopac Packaging Inc.	A-262-99	Rejetés	Le 29 novembre 2000

1. Le Tribunal a fait des efforts valables pour s'assurer que l'information indiquée ci-dessus est complète. Néanmoins, puisque le Tribunal ne participe pas aux appels interjetés auprès de la Cour fédérale du Canada, il ne peut affirmer que la liste contient toutes les décisions relatives à ces appels rendues entre le 1^{er} avril 2000 et le 31 mars 2001.

TABLEAU 2

Décisions du Tribunal portées en appel devant la Cour fédérale du Canada entre le 1^{er} avril 2000 et le 31 mars 2001 et en instance au 31 mars 2001¹

Appel n°	Appelante	Dossier de la Cour fédérale n°
2983	Les Industries Vogue Ltée	A-419-00
AP-89-153	Mo-Tres Ltd.	T-3288-90
AP-90-076	Kiewit's Cabinets Ltd.	T-1331-91/T-1986-94
AP-90-117	Artex Design Inc.	T-1556-92
AP-90-118	Seine River Cabinets Ltd.	T-1555-92
AP-91-045	Imperial Cabinet (1980) Co. Ltd.	T-1557-92
AP-91-141	The Sheldon L. Kates Design Group Limited	T-2957-94
AP-93-123	W. Ralston (Canada) Inc.	T-2112-95
AP-93-264	Cragg & Cragg Design Group Ltd.	T-2942-94
AP-94-212 et AP-94-213	Chaps Ralph Lauren, A Division of 131384 Canada Inc. et Modes Alto-Regal, Inc.	A-53-98
AP-95-045	Sidewinder Conversions Ltd.	T-314-97
AP-96-056	Infomco Inc.	T-2689-97
AP-97-063, AP-97-067, AP-97-077, AP-97-079, AP-97-084, AP-97-085, AP-97-096, AP-97-103, AP-97-115 et AP-97-136	AYP (Canada) Inc.	A-57-00
AP-97-137	Asea Brown Boveri Inc.	A-171-00
AP-98-047	N.C. Cameron & Sons Ltd.	A-341-00
AP-98-085	Ulex Corporation	A-28-00
AP-99-014	Patagonia International Inc.	A-820-00
AP-99-029 and AP-99-046	Sanyo Canada Inc.	A-605-00
AP-99-063	GL&V/Black Clawson-Kennedy	A-306-00
AP-99-083	Sandvik Tamrock Canada Inc. et Secoroc, A Division of Atlas Copco Canada Inc.	A-550-00
AP-99-105	Yamaha Motor Canada Ltée	A-001-01

1. Le Tribunal a fait des efforts valables pour s'assurer que l'information indiquée ci-dessus était complète. Néanmoins, puisque le Tribunal ne participe pas aux appels interjetés auprès de la Cour fédérale du Canada, il ne peut affirmer que la liste contient toutes les décisions du Tribunal portées en appel devant la Cour fédérale du Canada entre le 1^{er} avril 2000 et le 31 mars 2001.

Décisions d'appels rendues (suite)

Appel n°	Appelante	Date de la décision	Décision
AP-97-133	Chicago Rawhide Products Canada Ltd.	Le 21 décembre	Rejeté
AP-99-117	Lexus Products Ltd.	Le 11 janvier 2001	Rejeté
AP-2000-015	Costco Canada Inc.	Le 11 janvier 2001	Rejeté
AP-2000-017	Intersave West Buying and Merchandising Service	Le 16 janvier 2001	Rejeté
AP-99-092	Bauer Nike Hockey Inc.	Le 14 février 2001	Rejeté
AP-97-138	Atlas Alloys, une division de Rio Algom Limitée	Le 19 février 2001	Rejeté
AP-99-104	Boehringler Mannheim Canada Ltée	Le 22 février 2001	Rejeté
Loi sur la taxe d'accise			
2704	596720 Ontario Limited	Le 18 juillet 2000	Admis
2705	J.J. Taylor & Sons Limited	Le 18 juillet 2000	Rejeté
2706	Diesel Equipment Limited	Le 18 juillet 2000	Admis
AP-99-093 à AP-99-102 et AP-2000-010 à AP-2000-012	Western Construction Company Limited, J-1 Contracting Ltd., Penney Construction Limited, S M Construction Company Limited, Labrador Construction Limited, RDN Construction Limited, Provincial Paving Limited, Terra Nova Industries Ltd., Triple C Holdings Ltd./Penney Investments Ltd., McNamara Construction Company, a Division of Tarmac Canada Inc., Modern Paving Limited, Pyramid Construction Limited et Clifford Sheaves Construction Limited	Le 20 novembre 2000	Admis
AP-99-118	Lady Rosedale Inc.	Le 9 janvier 2001	Rejeté
AP-99-068 à AP-99-072	Shoppers Drug Mart Inc.	Le 26 février 2001	Rejetés

TABLEAU 1

Décisions d'appels rendues aux termes de l'article 67 de la *Loi sur les douanes* et de l'article 81.19 de la *Loi sur la taxe d'accise* entre le 1^{er} avril 2000 et le 31 mars 2001

Appel n°	Appelante	Date de la décision	Décision
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Loi sur les douanes

AP-99-010	Phosyn plc	Le 13 avril 2000	Admis
AP-99-061	Sport Dinaco Inc.	Le 4 mai 2000	Admis
AP-98-102	Calego International Inc.	Le 29 mai 2000	Admis
AP-98-092	Sharp Electronique du Canada Ltée	Le 7 juin 2000	Admis
AP-99-073	Rollins Machinery Ltd.	Le 12 juin 2000	Rejeté
AP-98-093 et AP-98-094	Cast Terminals Inc. et Terminus Racine (Montréal) Ltée	Le 22 juin 2000	Admis
AP-99-012	Rittal Systems Ltd.	Le 30 juin 2000	Admis en partie
AP-99-083	Sandvik Tamrock Canada Inc.	Le 30 juin 2000	Rejeté
AP-99-029 et AP-99-046	Sanyo Canada Inc.	Le 5 juillet 2000	Rejetés
AP-99-082	Nokia Products Limited	Le 26 juillet 2000	Admis
AP-98-002	Sherson Marketing Corporation	Le 27 juillet 2000	Admis
AP-98-097	Sherson Marketing Corporation	Le 27 juillet 2000	Admis en partie
AP-98-098	Sherson Marketing Corporation	Le 27 juillet 2000	Admis en partie
AP-98-099	Sherson Marketing Corporation	Le 27 juillet 2000	Rejeté
AP-99-042	Pabla Fashions Ltd.	Le 30 août 2000	Rejeté
AP-99-074	Avon Canada Inc.	Le 30 août 2000	Rejeté
AP-98-012	EM Plastic & Electric Products Ltd.	Le 31 août 2000	Admis
AP-93-058	Metabal Ltd.	Le 7 septembre 2000	Admis en partie
AP-93-079	Olympia Tube Ltd.	Le 7 septembre 2000	Admis en partie
AP-99-043	Toyota Canada Inc.	Le 12 septembre 2000	Rejeté
AP-99-063	GL&V/Black Clawson-Kennedy	Le 27 septembre 2000	Admis
AP-99-014	Patagonia International, Inc.	Le 28 septembre 2000	Admis
AP-99-086	Canadisc Inc.	Le 24 octobre 2000	Rejeté
AP-2000-026	Continuous Colour Coat Limited	Le 17 novembre 2000	Admis
AP-99-085	Bio Agri Mix Ltd.	Le 28 novembre 2000	Rejeté
AP-99-105	Yamaha Motoeur du Canada Ltée	Le 6 décembre 2000	Rejeté
AP-94-143	Liz Clalborne (Canada) Ltd.	Le 12 décembre 2000	Rejeté

Le Tribunal a entendu le témoignage d'un expert, membre du personnel du département de l'éducation technique chez Sharp Electronique du Canada Ltée, qui avait élaboré des cours d'instruction pour l'entreprise. Cet expert a expliqué le fonctionnement, la conception particulière et les diverses composantes des cartouches de toner. L'appelant a soutenu que les cartouches de toner étaient des « parties » parce qu'elles devaient servir avec des types particuliers de photocopieurs et pouvaient demeurer fixées aux photocopieurs pendant leur fonctionnement. À l'appui de son argument, l'appelant a invoqué deux Avis de classement publiés par l'Organisation mondiale des douanes (OMD). L'appelant a soutenu que les avis susmentionnés classaient deux types de cartouches de toner, l'une comportant des parties mobiles et l'autre n'en comportant pas, à titre de parties et accessoires d'appareils de photocopie. L'intimé a soutenu notamment que les cartouches de toner n'étaient ni des parties ni des accessoires, puisqu'elles n'étaient pas essentielles au procédé de photocopie. En ce qui a trait aux Avis de classement de l'OMD, l'intimé était d'avis que les cartouches de toner en cause différaient des cartouches mentionnées dans lesdits Avis, puisque ces derniers traitaient de cartouches dotées de parties mobiles, tandis que les cartouches de toner en cause ne comprenaient pas de parties mobiles.

Bien que la position no 37 07 paraisse viser les marchandises en cause, le Tribunal était convaincu que les marchandises devaient être classées dans le numéro tarifaire 9009,90,90 à titre de parties et accessoires pour appareils de photocopie. Le Tribunal était d'avis que les cartouches étaient fixées à des modèles spécifiques de photocopieurs et en amélioraient l'efficacité. Les cartouches facilitaient la distribution sans déversement du toner au photocopieur. Aux termes de la Règle 1 des Règles générales pour l'interprétation du Système harmonisé, le Tribunal a conclu que la Note 2 du Chapitre 90, qui prévoit que les parties et accessoires, lorsqu'ils sont reconnaissables comme exclusivement ou principalement destinés à une machine particulière, sont classés dans la position afférente à ces machines, instruments ou appareils, commandait le classement des marchandises en cause dans le numéro tarifaire 9009,90,90. En outre, le Tribunal s'est fondé sur les Avis de classement fournis par l'appelant. De l'avis du Tribunal, les éléments de preuve indiquaient que les cartouches en cause devaient être classées à titre d'accessoires d'appareils de photocopie dans le numéro tarifaire 9009,90,90. Pour ces motifs, l'appel a été admis.

des édifices pour le confort des personnes. En outre, l'intime a soutenu qu'il ressortait clairement de la jurisprudence qu'une loi doit être interprétée en suivant le sens ordinaire des mots lorsqu'une disposition est claire et sans équivoque, comme c'était le cas en l'espèce. L'intime a soutenu que l'expression « huile à chauffage » était définie dans les dictionnaires comme étant une huile combustible utilisée dans les appareils de chauffage domestiques et de l'huile utilisée pour le chauffage résidentiel.

Étant donné que la *Loi sur la taxe d'accise* ne définit pas l'expression « huile à chauffage », le Tribunal a donc dû déterminer comment il convenait d'interpréter cette expression. Le Tribunal était d'avis que les éléments de preuve présentés dans ces appels lui permettaient de conclure que l'expression « huile à chauffage » devait être interprétée suivant le sens que lui donnent les personnes qui connaissent bien l'industrie pétrolière. Les éléments de preuve mis à la disposition du Tribunal montraient que les HCC conformes à la norme étaient destinés aux appareils chauffés à l'huile pour la génération de chaleur pour des applications domestiques et industrielles. Le Tribunal était aussi d'avis que le qualificatif « d'usage industriel » pouvait renvoyer au chauffage de granulats rocheux dans la fabrication d'asphalte. En outre, le Tribunal était convaincu qu'une telle interprétation reflétait justement l'objet de la *Loi sur la taxe d'accise* et l'intention du Parlement. Étant donné l'évolution législative et celle de la définition se rapportant à l'expression « huile à chauffage », le Tribunal estimait que l'espèce pouvait être distinguée de la décision rendue dans la cause *Canadian Utilities*. Par conséquent, le Tribunal a conclu que l'huile combustible utilisée par les appelantes pour chauffer des granulats dans la fabrication d'asphalte était une huile à chauffage et était, de ce fait, exempte de la taxe d'accise en vertu de la *Loi sur la taxe d'accise*.

Cet appel a été interjeté à l'égard d'une décision rendue par le sous-ministre du Revenu national aux termes de l'article 63 de la Loi sur les douanes concernant le classement tarifaire des cartouches de toner pour photocopieurs. La question en litige dans cet appel consistait à déterminer si les cartouches de toner importées par l'appelante étaient correctement classées dans la position n° 37.07 de l'annexe I du Tarif des douanes à titre de préparations chimiques pour usages photographiques, comme l'a déterminé l'intime, ou si elles devaient être classées dans la position n° 90.09 à titre de parties et accessoires d'appareils de photocopie, comme l'a soutenu l'appelante. Les cartouches de toner en cause étaient temporairement fixées à des photocopieurs pour permettre le transvasement du toner dans la trémie de toner du photocopieur. Le toner était utilisé dans le procédé de photocopie pour produire une image visible.

**Sharp Electronique du
Canada
c.
SMR
AP-98-092**
Décision :
Appel admis
(7 juin 2000)

Ces appels ont été interjetés aux termes de l'article 81, 19 de la *Loi sur la taxe d'accise* à l'égard de cotisations établies par le ministre relativement à la taxe d'accise imposée sur du combustible diesel utilisé pour chauffer des granulats rocheux dans la fabrication d'asphalte. Les appelantes exploitaient leurs entreprises à Terre-Neuve et effectuaient, notamment, des travaux de construction de routes dans lesquels elles utilisaient l'asphalte qu'elles fabriquaient ou produisaient dans des installations mobiles à four tournant. Dans cette affaire, le Tribunal devait déterminer si l'huile combustible destinée à être utilisée et utilisée de fait par les appelantes pour chauffer des granulats rocheux dans la fabrication d'asphalte était une « huile à chauffage » au sens donné à cette expression dans la définition de « combustible diesel » qui se trouve au paragraphe 2(1) de la *Loi sur la taxe d'accise* et, par conséquent, si l'huile combustible utilisée de la sorte était exempte de la taxe d'accise.

Les appelantes et l'intimé ont présenté au Tribunal un exposé conjoint des faits sur l'utilisation de l'huile combustible et sur le procédé de fabrication. En outre, un conseiller principal en carburants et additifs de Petro-Canada a été reconnu comme expert en normes sur les combustibles à base de pétrole utilisés au Canada et a présenté des éléments de preuve au nom des appelantes. Le témoin expert a donné des explications concernant les normes sur l'huile combustible à chauffage (HCC) qui ont été adoptées par l'un des comités de l'Office des normes générales du Canada, soit le Comité des combustibles de distillat moyen. Il a indiqué en outre que la norme sur les HCC était, en fait, la norme nationale au Canada et que le gouvernement du Canada l'utilisait, sans modification, aux fins de ses achats d'huile à chauffage. Il a témoigné que la norme sur les HCC précisait que les HCC de types 0 à 6 pouvaient être utilisées pour des applications domestiques et industrielles. Invité à définir la signification habituelle de l'expression « utilisé à des fins industrielles », le témoin expert a témoigné qu'il pouvait s'agir de n'importe quelle utilisation industrielle et a indiqué, à titre d'exemples, plusieurs types d'applications autres que dans les appareils domestiques, comme les séchoirs d'asphalte.

Selon les appelantes, la norme sur les HCC était représentative de la perception habituelle à cet égard de l'industrie. Les appelantes ont aussi souligné que les lois fiscales, comme la *Loi sur la taxe d'accise*, n'étaient plus interprétées par application d'une méthode strictement littérale; elles devaient être interprétées suivant des principes qui s'appliquent à toute la législation. L'intimé a soutenu que les appelantes n'avaient pas l'intention d'utiliser ou n'avaient pas de fait utilisé l'huile combustible comme huile à chauffage et que, par conséquent, elle n'était pas exempte des dispositions de la *Loi sur la taxe d'accise*. L'intimé a exhorté le Tribunal à suivre la décision rendue par la Commission du tarif dans la cause *Canadian Utilities c. S-MRND* (*Canadian Utilities*), dans laquelle elle a attribué au mot « heating » (« chauffage ») le sens d'élever la température dans

Western Construction
J-1 Contracting
Penney Construction
S M Construction
Labrador Construction
RDN Construction
Provincial Paving
Terra Nova Industries
Triple C Holdings/Penney Investments
McNamara Construction
Modern Paving
Pyramid Construction
et Clifford Sheaves Construction
S-MRN c.
 AP-99-093 à AP-99-102
 et AP-2000-010 à AP-2000-012
 Décision :
 Appels admis
 (20 novembre 2000)

différente de la révision de l'intimé ou d'une position défendue par l'appelante. L'intimé a soutenu qu'un appel interjeté aux termes de l'article 67 de la *Loi sur les douanes* concernait la révision de l'intimé, et non les motifs à l'appui de sa décision. Le fait que les paiements versés par l'appelante aux concédants de licence étaient assujettis à titre de « redevances » ou « d'aides » constituait le motif de la décision.

Le Tribunal était d'avis que, dans un appel, l'intimé pouvait présenter d'autres motifs, ou de nouveaux motifs, pour justifier la valeur en douane de marchandises à l'appui de sa révision, en plus de ceux qu'il avait inclus dans l'adite révision. Le Tribunal a jugé que l'affaire dans *Banque Continentale* ne s'appliquait pas aux circonstances des présents appels, étant donné que l'intimé avait tenté dans cette affaire de présenter un nouveau motif à l'appui de sa révision. Par ailleurs, le Tribunal est un « tribunal de première instance » où des éléments de preuve sont produits, des témoins, contre-interrogés et des plaidoiries, présentées. Aux termes de l'article 67 de la *Loi sur les douanes*, le Tribunal est investi d'un vaste pouvoir de « statuer [...] selon la nature de l'espèce, par ordonnance, constatation ou déclaration ». Par conséquent, le Tribunal était d'avis que l'intimé pouvait présenter d'autres motifs à l'appui de sa décision. De l'avis du Tribunal, l'assujettissement d'un article à des droits de douane découle de l'application des dispositions de la *Loi sur les douanes*, et non de la révision faite par l'intimé. L'objectif du Tribunal lorsqu'il entend un appel est d'appliquer les articles de la *Loi sur les douanes* qui traitent de l'appréciation de l'évaluation de la valeur aux éléments de preuve produits à l'audience afin de déterminer correctement la valeur en douane des marchandises.

En ce qui a trait à la troisième question, c.-à-d. celle de savoir si le Tribunal devait radier les actes de procédure de l'intimé et admettre les appels, le Tribunal était d'avis que cette affaire n'en était pas une dans laquelle il était « évident et manifeste » ou « hors de tout doute » que les actes de procédure ne révélaient aucune cause d'action valable. Cette affaire ne répond pas à un tel critère, étant donné que les principes juridiques en cause qui se rapportent à la « valeur en douane » aux termes de la *Loi sur les douanes* faisaient encore l'objet de discussions. De plus, les faits qui sous-tendent cette affaire sont contestés et n'ont pas été démontrés. De ce fait, le Tribunal était d'avis qu'une audience en bonne et due forme devait être tenue dans cette affaire.

La requête a été rejetée. La décision du Tribunal a été portée en appel.

Dans sa requête, l'appelante a demandé que le Tribunal radie le mémoire de l'intimé et qu'il admette les appels en se fondant sur les autres documents au dossier. L'appelante a soutenu que les actes de procédure de l'intimé ne révélait aucune preuve *prima facie*. L'appelante a aussi soutenu que l'intimé ne pouvait, dans un appel entendu par le Tribunal, présenter des motifs non mentionnés dans la révision pour justifier la cotisation de droits.

Le Tribunal était d'avis que cette requête se rapportait à la nature d'un appel interjeté aux termes de l'article 67 de la *Loi sur les douanes* et soulevait trois questions principales : 1) le Tribunal avait-il compétence pour radier des actes de procédure et décider d'un appel sur une requête préliminaire? 2) le Tribunal devait-il examiner l'argument de rechange de l'intimé selon lequel les paiements versés par l'appelante aux concédants de licence étaient des aides? 3) le Tribunal devait-il radier les actes de procédure de l'intimé et admettre les appels?

En ce a trait à la première question, l'appelante a soutenu que le Tribunal avait compétence, en vertu du paragraphe 17(2) de la Loi sur le TCCF ainsi que de l'article 5, de l'alinéa 18(1)⁷ et de l'article 24 des Règles de procédure, pour examiner une telle requête. Pour sa part, l'intimé a soutenu que le Tribunal n'avait pas compétence pour entendre une requête préliminaire en radiation d'actes de procédure, sauf en ce qui concernait les questions de compétence. Le Tribunal était d'avis que l'article 67 de la *Loi sur les douanes* ne conférait pas aux parties le droit sans réserve à une audience, même lorsqu'une audience n'était pas nécessaire. De l'avis du Tribunal, l'article 67 ne devait pas être interprété comme signifiant que le Tribunal ne pouvait être maître de la procédure selon laquelle l'appel était tranché. Par conséquent, le Tribunal était d'avis qu'il avait compétence, dans le cadre d'une requête préliminaire, pour radier des actes de procédure et rejeter un appel, mais seulement lorsque l'issue de l'espèce était « évidente et manifeste » ou qu'il était « hors de tout doute » que les actes de procédure ne révélaient pas de cause d'action valable.

En ce qui a trait à la question de savoir si le Tribunal devait examiner l'argument de rechange de l'intimé selon lequel les paiements versés par l'appelante aux concédants de licence étaient des aides, l'appelante a soutenu que l'intimé ne pouvait présenter d'autres motifs pour justifier la cotisation de droits, c.-à-d. des motifs non mentionnés dans les révisions que l'intimé avait faites aux termes du paragraphe 63(3) de la *Loi sur les douanes*, qui fondait les présents appels. L'appelante a soutenu que la décision rendue par la Cour suprême du Canada dans l'affaire *Banque Continentale du Canada c. Canada (Banque Continentale)*, une affaire relative au droit fiscal, s'appliquait aux décisions du Tribunal, empêchant l'intimé de soulever de nouveaux arguments devant le Tribunal. L'appelante a en outre soutenu que le Tribunal ne pouvait, de sa propre initiative, rendre une décision dans le cas d'un appel relatif aux douanes qui soit

Il s'agissait d'une requête préliminaire déposée dans le cadre d'appels interjetés aux termes du paragraphe 67(1) de la *Loi sur les douanes* à l'égard de révisions rendues par l'ADRC concernant la valeur en douane de marchandises importées. Dans ces décisions, l'intimé avait imposé des droits sur les paiements versés par l'appelant aux concédants de licence à titre de « redevances » conformément à l'alinéa 48(5)a) de la *Loi sur les douanes*. Dans son mémoire, l'intimé a soutenu, à titre d'argument de rechange, qu'une partie des droits versés conformément aux ententes de sous-licence et de licence devrait être ajoutée au prix payé ou à payer, à titre d'aides.

Des nombreuses causes entendues par le Tribunal dans le cadre de ses fonctions d'appel, plusieurs décisions se distinguent, que ce soit par la nature particulière du produit en cause ou par la portée juridique de la cause. On trouvera ci-après des sommaires d'un échantillon représentatif de tels appels, deux d'entre eux ayant été entendus aux termes de la *Loi sur les douanes* et un, aux termes de la *Loi sur la taxe d'accise*. Ces sommaires ont été préparés uniquement à titre informatif et n'ont aucun statut juridique.

Le tableau 1 du présent chapitre donne une liste des décisions relatives aux appels, rendues au cours de l'exercice.

Loi	Admis	Admis en partie	Rejeté	Total
Loi sur les douanes	12	5	19	36
Loi sur la taxe d'accise	15	-	7	22

Décisions relatives aux appels

Habituellement, le Tribunal rend une décision motivée sur les questions en litige dans les 120 jours suivant l'audience.

Si l'appelante, l'intimé ou un intervenant n'est pas d'accord avec la décision du Tribunal, il peut porter celle-ci en appel devant la Cour fédérale du Canada.

Au cours de l'exercice, le Tribunal a entendu 46 appels, dont 25 aux termes de la *Loi sur les douanes* et 21 aux termes de la *Loi sur la taxe d'accise*. Des décisions ont été rendues pour 58 causes, dont 29 qui ont été entendues au cours de l'exercice.

Causes examinées

Sommaire de décisions choisies

GFT Mode Canada
c. S-MRN
AP-96-046 et
AP-96-074
Décision :
Requête rejetée
(18 mai 2000)

Audiences

autres personnes intéressées d'y assister. Selon la complexité des questions en litige et du précédent susceptible d'en découler, les appels seront entendus par un ou trois membres. Des personnes peuvent intervenir dans un appel en indiquant la nature de leur intérêt dans l'appel et la raison pour l'intervention et comment elles peuvent aider le Tribunal à résoudre l'appel.

Une personne peut défendre sa propre cause devant le Tribunal ou se faire représenter par un conseiller juridique ou par tout autre représentant. L'intimé est généralement représenté par un conseiller du ministère de la Justice.

La procédure à suivre au cours de l'audience a été établie de sorte que l'appelante et l'intimé puissent tous deux avoir l'occasion de présenter leurs arguments. Elle permet également au Tribunal d'obtenir les renseignements les plus justes pour prendre une décision. Tout comme dans une cour, l'appelante et l'intimé peuvent citer des témoins à comparaître, et ces témoins répondent, sous la foi du serment ou d'une affirmation solennelle, aux questions que leur posent la partie adverse ou les membres du Tribunal pour vérifier la validité de leur témoignage. Une fois tous les éléments de preuve présentés, les parties peuvent invoquer des arguments à l'appui de leur position respective.

Le Tribunal, de sa propre initiative ou à la demande de l'appelante ou l'intimé, peut décider de tenir une audience sur la foi d'exposés écrits. Dans un tel cas, le Tribunal publie un avis d'audience dans la *Gazette du Canada* afin de permettre aux autres personnes intéressées d'y participer. Dans l'avis, le Tribunal établit la façon de procéder et le délai pour le dépôt des exposés et le besoin, s'il y a lieu, des parties de déposer un exposé conjoint des faits.

Le Tribunal tient également des audiences par voie électronique, que ce soit par conférence téléphonique ou par vidéoconférence.

Les audiences tenues par conférence téléphonique sont utilisées principalement pour traiter les requêtes préliminaires et les questions de compétence, lorsque la présence ou la participation de témoins n'est pas requise.

Les audiences tenues par vidéoconférence sont utilisées comme alternative aux audiences tenues dans des régions à travers le Canada ou à celles qui exigent que des parties demeurant à l'extérieur de l'Ontario ou du Québec se présentent dans les locaux du Tribunal, à Ottawa. La procédure est semblable à celle d'une audience tenue dans les locaux du Tribunal. Cependant, le Tribunal demande que les documents écrits, les pièces, le matériel pour l'argumentation, etc., soient déposés auprès du Tribunal avant la tenue de la vidéoconférence.

CHAPITRE IV

APPELS

Introduction

Le Tribunal entend les appels des décisions du commissaire aux termes de la *Loi sur les douanes* et de la LMSI ou du ministre du Revenu national (le ministre) aux termes de la *Loi sur la taxe d'accise*. Le Tribunal entend des appels concernant le classement tarifaire et la valeur en douane de marchandises importées au Canada ainsi que concernant l'origine de marchandises importées des États-Unis, du Mexique ou du Chili aux termes de la *Loi sur les douanes*. Le Tribunal entend et décide également des appels relatifs à l'application, à des marchandises importées, de conclusions ou d'une ordonnance du Tribunal concernant le dumping ou le subventionnement et la valeur normale ou le prix à l'exportation ou le subventionnement de marchandises importées aux termes de la LMSI. Aux termes de la *Loi sur la taxe d'accise*, une personne peut faire appel au Tribunal d'une décision du ministre concernant une cotisation ou une détermination de la taxe de vente fédérale ou de la taxe d'accise.

Le Tribunal essaie d'être informel et accessible. Cependant, il existe certaines procédures et certains délais imposés par la loi et par le Tribunal. Par exemple, un appel est interjeté par le dépôt d'un avis par écrit ou d'une lettre d'appel auprès du secrétaire du Tribunal dans le délai prévu par la loi aux termes de laquelle l'appel est interjeté.

Règles de procédure

Conformément aux Règles de procédure du Tribunal, la personne qui interjette appel (l'appelant) dispose habituellement de 60 jours pour déposer auprès du Tribunal un document appelé « mémoire ». En règle générale, le mémoire indique la loi aux termes de laquelle l'appel est interjeté, décrit les marchandises en cause et les points en litige entre l'appelant et le ministre ou le commissaire (l'intimé) et les motifs pour lesquels l'appelant croit que la décision de l'intimé est incorrecte. Une copie du mémoire doit également être remise à l'intimé.

L'intimé doit aussi respecter des délais et suivre une procédure établie. Habituellement, dans les 60 jours qui suivent la réception du mémoire de l'appelant, l'intimé doit remettre au Tribunal et à l'appelant un mémoire de lequel sa position est énoncée. Le secrétaire du Tribunal communique ensuite avec les deux parties pour fixer la date d'audience. Les audiences se déroulent habituellement en public, devant des membres du Tribunal. Le Tribunal fait paraître un avis d'audience dans la *Gazette du Canada* afin de permettre aux

TABLEAU 5

Causes aux termes de la LMSI devant la Cour fédérale du Canada ou un groupe spécial binationnel entre le 1^{er} avril 2000 et le 31 mars 2001

Cause n°	Produit	Pays d'origine	Tribunal	Date de dépôt	Dossier n°/état
RR-97-007	Certains produits plats de tôles d'acier laminées à froid	Allemagne, France, Italie, Royaume-Uni et États-Unis	CF	Le 27 août 1998	A-483-98/ A-484-98/ A-514-98/ A-515-98 Appels abandonnés
RR-97-008	Certains raccords de tuyauterie en cuivre	États-Unis	GSB	Le 20 novembre 1998	CDA-USA-98-1904-03 Décision confirmée
NQ-97-001	Certaines tôles d'acier au carbone laminées à chaud	Mexique	GSB	Le 12 juillet 1999	CDA-MEX-99-1904-01
RR-98-007	Certains produits de tôle d'acier résistant à la corrosion	Brésil, Allemagne, États-Unis	CF	Le 2 septembre 1999	A-236-99 Appel rejeté
NQ-99-003	Opacifiants iodés	États-Unis (y compris le Commonwealth de Puerto Rico)	GSB	Le 12 juillet 2000	CDA-USA-2000-1904-02 Procédure suspendue
NQ-2000-001	Certains réfrigérateurs, lave-vaisselle et sècheuses	États-Unis	GSB	Le 22 septembre 2000	CDA-USA-2000-1904-04
RR-99-006	Sucre raffiné	États-Unis, Danemark, Allemagne, Pays-Bas, Royaume-Uni et Union européenne	CF	Le 1 ^{er} décembre 2000	A-746-00

Nota : CF — Cour fédérale du Canada
GSB — Groupe spécial binationnel

Conclusions et ordonnances en vigueur (suite)

Réexamen n° ou enquête n°	Date de la décision	Produit	Pays	Numéro de la décision antérieure et date
RR-99-004	Le 5 juin 2000	Tubes soudés en acier au carbone	Corée	RR-94-004 (le 5 juin 1995) RR-89-008 (le 5 juin 1990) ADT-6-83 (le 28 juin 1983)
NQ-99-004	Le 27 juin 2000	Certaines tôles d'acier au carbone	Bresil, Finlande, Inde, Indonésie, Thaïlande et Ukraine	
NQ-2000-001	Le 1 ^{er} août 2000	Certains réfrigérateurs, lave-vaisselle et sècheuses	États-Unis (WCI et Whirlpool)	
RR-99-005	Le 13 septembre 2000	Pommes de terre enlèbres	États-Unis	RR-94-007 (le 14 septembre 1995) RR-89-010 (le 14 septembre 1990) CIT-16-85 (le 18 avril 1986) ADT-4-84 (le 4 juin 1984)
NQ-2000-002	Le 27 octobre 2000	Certaines barres rondes en acier inoxydable	Bresil et Inde	
RR-99-006	Le 3 novembre 2000	Sucre raffiné	États-Unis, Danemark, Allemagne, Pays-Bas, Royaume-Uni et Union européenne	NQ-95-002 (le 6 novembre 1995)
NQ-2000-004	Le 8 décembre 2000	Chaussures et semelles extérieures etanchées	Chine	

1. Pour obtenir la description précise du produit, se reporter aux conclusions ou aux ordonnances indiquées dans la première colonne du tableau.

Conclusions et ordonnances en vigueur (suite)

Réexamen n° ou enquête n°	Date de la décision	Produit	Pays	Numéro de la décision antérieure et date
RR-98-004	Le 17 mai 1999	Certaines tôles d'acier au carbone laminées à chaud et certaines tôles d'acier alliées résistant à faible teneur	Italie, Corée, Espagne et Ukraine	NQ-93-004 (le 17 mai 1994)
NQ-98-003	Le 18 juin 1999	Certaines barres rondes en acier inoxydable	Corée	
RR-98-005	Le 22 juin 1999	Cartouches de fusils de calibre 12	République tchèque et République de Hongrie	NQ-93-005 (le 22 juin 1994)
NQ-98-004	Le 2 juillet 1999	Certains produits plats de tôle en acier au carbone et en acier allié, laminés à chaud	France, Roumanie, Fédération de Russie et République slovaque	
RR-98-006	Le 19 juillet 1999	Monuments commémoratifs faits de granit noir et tranches de granit noir	Inde	NQ-93-006 (le 20 juillet 1994)
RR-98-007	Le 28 juillet 1999	Certains produits de tôle d'acier résistant à la corrosion	Bresil, Allemagne, Japon, Corée et Etats-Unis	NQ-93-007 (le 29 juillet 1994)
NQ-99-001	Le 27 août 1999	Certains produits de tôle d'acier laminés à froid	Belgique, Fédération de Russie, République slovaque et Turquie	
NQ-99-002	Le 12 janvier 2000	Certaines barres d'armature pour béton	Cuba, Corée et Turquie	
RR-99-002	Le 20 mars 2000	Jambon en conserve subventionné	Danemark et Pays-Bas	G/C-1-84 (le 7 août 1984) RR-89-003 (le 15 mars 1990) RR-94-002 (le 21 mars 1995)
NQ-99-003	Le 1 ^{er} mai 2000	Opacifiants iodés	Etats-Unis (y compris le Commonwealth de Porto Rico	
RR-99-003	Le 1 ^{er} mai 2000	Boîtes pour dames et souliers pour dames	Chine	RR-94-003 (le 2 mai 1995) NQ-89-003 (le 3 mai 1990)

TABLEAU 4

Conclusions et ordonnances aux termes de la LMSI en vigueur au 31 mars 2001¹

Réexamen n° ou enquête n°	Date de la décision	Produit	Pays	Numéro de la décision antérieure et date
RR-95-001	Le 5 juillet 1996	Caissons pour puits de pétrole et de gaz	Corée et États-Unis	CIT-1-5-85 (le 17 avril 1986) R-7-86 (le 6 novembre 1986) RR-90-005 (le 10 juin 1991)
RR-95-002	Le 25 juillet 1996	Tubes soudés en acier au carbone	Argentine, Inde, Roumanie, Taipei chinois, Thaïlande, Venezuela et Brésil	NQ-90-005 (le 26 juillet 1991) NQ-91-003 (le 23 janvier 1992)
RR-96-001	Le 12 septembre 1996	Tubes soudés en acier inoxydable	Taipei chinois	NQ-91-001 (le 5 septembre 1991)
NQ-96-002	Le 21 mars 1997	All frais	Chine	
NQ-96-003	Le 11 avril 1997	Panneaux isolants en polyiso	États-Unis	
RR-96-004	Le 21 avril 1997	Tapis produit sur machine à tisser	États-Unis	NQ-91-006 (le 21 avril 1992)
NQ-96-004	Le 27 juin 1997	Panneaux de béton	États-Unis	
RR-97-001	Le 20 octobre 1997	Chaussures et couvre-chaussures en caoutchouc imperméables	Chine	ADT-2-82 (le 23 avril 1982) R-7-87 (le 22 octobre 1987) RR-92-001 (le 21 octobre 1992)
NQ-97-001	Le 27 octobre 1997	Certaines toiles d'acier au carbone laminées à chaud	Mexique, Chine, Afrique du Sud et Fédération de Russie	
RR-97-002	Le 28 novembre 1997	Laitue (pommée) Iceberg (fraîche)	États-Unis	NQ-92-001 (le 30 novembre 1992)
RR-97-003	Le 10 décembre 1997	Bicyclettes et cadres de bicyclettes	Taipei chinois et Chine	NQ-92-002 (le 11 décembre 1992)
NQ-97-002	Le 29 avril 1998	Certaines préparations alimentaires pour bœufs	États-Unis	
NQ-98-001	Le 4 septembre 1998	Certaines barres rondes en acier inoxydable	Allemagne, France, Inde, Italie, Japon, Espagne, Suède, Taipei chinois et Royaume-Uni	
RR-98-001	Le 18 novembre 1998	Isolant préformé en fibre de verre pour tuyaux	États-Unis	NQ-93-002 (le 19 novembre 1993)

TABLEAU 3

Ordonnances rendues aux termes de l'article 76 de la LMSI entre le 1^{er} avril 2000 et le 31 mars 2001 et réexamens en cours à la fin de l'exercice

Réexamen n°	Produit	Pays	Date de l'ordonnance	Ordonnance
RR-99-003	Bottes pour dames et souliers pour dames	Chine	Le 1 ^{er} mai 2000	Ordonnance prorogée
RR-99-004	Tubes soudés en acier au carbone	Corée	Le 5 juin 2000	Ordonnance prorogée
RR-99-005	Pommes de terre entières	États-Unis	Le 13 septembre 2000	Ordonnance prorogée
RR-99-006	Sucre raffiné	États-Unis, Danemark, Allemagne, Pays-Bas, Royaume-Uni et Union européenne	Le 3 novembre 2000	Conclusions prorogées
RR-2000-001	Certains caissons pour puits de pétrole et de gaz	Corée et États-Unis		
RR-2000-002	Certains tubes soudés en acier au carbone	Argentine, Inde, Roumanie, Taipei chinois, Thaïlande, Venezuela et Brésil		

TABLEAU 2

Conclusions rendues aux termes de l'article 43 de la LMSI entre le 1^{er} avril 2000 et le 31 mars 2001 et enquêtes menées aux termes de l'article 42 de la LMSI en cours à la fin de l'exercice

Enquête n°	Produit	Pays	Date des conclusions/ de la décision	Conclusions/Décision
NQ-99-003	Opacifiants iodés	Etats-Unis (y compris le Commonwealth de Porto Rico)	Le 1 ^{er} mai 2000	Dommage
NQ-99-004	Certaines tôles d'acier au carbone	Brésil, Finlande, Inde, Indonésie, Thaïlande et Ukraine	Le 27 juin 2000	Dommage
NQ-2000-001	Certains réfrigérateurs, lave-vaisselle et sècheuses	Etats-Unis	Le 1 ^{er} août 2000	Dommage
NQ-2000-002	Certaines barres rondes en acier inoxydable	Brésil et Inde	Le 27 octobre 2000	Dommage
NQ-2000-003	Papier de bingo	Etats-Unis	Le 29 septembre 2000	Enquête suspendue
NQ-2000-004	Chaussures et semelles extérieures étanches	Chine	Le 8 décembre 2000	Menace de dommage
NQ-2000-005	Certains maïs-grain	Etats-Unis	Le 7 mars 2001	Pas de dommage
NQ-2000-006	All	Chine et Vietnam		
NQ-2000-007	Certaines barres d'armature pour béton	Indonésie, Japon, Lettonie, Moldova, Pologne, Taipei chinois et Ukraine		
NQ-2000-008	Certaines tôles d'acier résistant à la corrosion	Chine, Inde, Malaisie, Fédération de Russie, Afrique du Sud et Taipei chinois		

TABLEAU 1

Décisions provisoires de dommage rendues aux termes du paragraphe 37.1(1) de la LMSI entre le 1^{er} avril 2000 et le 31 mars 2001 et enquêtes préliminaires de dommage menées aux termes du paragraphe 34(2) de la LMSI en cours à la fin de l'exercice

Enquête préliminaire de dommage n°	Produit	Pays	Date de la décision	Décision
PI-2000-001	Certains maïs-grain	États-Unis	Le 10 octobre 2000	Dommage
PI-2000-002	All	Chine et Viêtnam	Le 29 décembre 2000	Dommage
PI-2000-003	Certains barres rondes en acier inoxydable	Indonésie, Japon, Lettonie, Moldova, Pologne, Taipei chinois et Ukraine	Le 2 janvier 2001	Dommage
PI-2000-004	Presses à vis essoreuses de pâte	Norvège	Le 19 janvier 2001	Enquête close
PI-2000-005	Certains tôles d'acier résistant à la corrosion	Chine, Inde, Malaisie, Portugal, Fédération de Russie, Afrique du Sud et Taipei chinois	Le 2 février 2001	Dommage
PI-2000-006	Certains feuillets et tôles plats en acier au carbone et en acier allié, laminés à chaud	Bresil, Bulgarie, Chine, Taipei chinois, Inde, Corée, ex-République yougoslave de Macédoine, Nouvelle-Zélande, Arabie Saoudite, Afrique du Sud, Thaïlande, Ukraine et Yougoslavie	Le 20 mars 2001	Dommage
PI-2000-007	Certains tôles d'acier laminées à froid	Bresil, Taipei chinois, ex-République yougoslave, Macédoine, Italie, Luxembourg, Malaisie, Chine, Corée et Afrique du Sud		

dans *Opacifants iodés* (NQ-99-003) avait été annulée, et un groupe spécial binational n'avait pas encore entendu les demandes de révision concernant les conclusions (Mexique) du Tribunal dans *Tôles d'acier au carbone* (NQ-97-001) et ses conclusions (États-Unis) dans *Certains réfrigérateurs, lave-vaisselle et sècheuses* (NQ-2000-001).

Les gouvernements membres de l'OMC peuvent contester devant les instances d'appel de l'OMC les conclusions de dommages ou les ordonnances rendues par le Tribunal dans des causes de droits antidumping et compensateurs. Ce processus est amorcé par des consultations intergouvernementales. Aucun appel des conclusions ou des ordonnances du Tribunal n'est présentement devant les instances d'appel de l'OMC.

**Règlement des
différends selon
l'OMC**

sucrer, représentant les producteurs nationaux, la Canadian Sugar Beet Producers' Association Inc., la Canadian Sugar Users Coalition, plusieurs fabricants et importateurs d'aliments, le commissaire de la concurrence et la United States Beet Sugar Association ont participé au réexamen relatif à l'expiration.

Deux réexamens relatifs à l'expiration étaient en cours à la fin de l'exercice. Ceux-ci visaient les ordonnances rendues dans 1) *Certains catissons pour puits de pétrole et de gaz* (RR-2000-001) concernant des importations sous-évaluées en provenance de la Corée et des États-Unis et 2) *Certains tubes soudés en acier au carbone* (RR-2000-002) concernant des importations sous-évaluées en provenance de l'Argentine, de l'Inde, de la Roumanie, de Taïpei chinois, de la Thaïlande, du Venezuela et du Brésil.

Les activités du Tribunal eu égard aux réexamens relatifs à l'expiration effectués au cours de l'exercice sont résumées au tableau 3. Les conclusions et les ordonnances du Tribunal en vigueur au 31 mars 2001 sont énumérées au tableau 4.

Toutefois, personne visée par des conclusions ou des ordonnances du Tribunal peut demander un examen judiciaire de la Cour fédérale du Canada pour des motifs de prétendus dénis de justice naturelle et erreurs de fait ou de droit. Dans les causes visant des marchandises en provenance des États-Unis et du Mexique, les parties peuvent demander qu'un examen judiciaire soit effectué par la Cour fédérale du Canada ou qu'une révision soit faite par un groupe spécial binationnel formé en vertu de l'ALÉNA. Le tableau 5 énumère les décisions rendues par le Tribunal aux termes de l'article 43, 44 ou 76 de la LMSTI qui ont été soumises à la Cour fédérale du Canada pour faire l'objet d'un examen judiciaire ou à un groupe spécial binationnel pour faire l'objet d'une révision au cours de l'exercice.

Au cours de l'exercice, la Cour fédérale du Canada a confirmé les ordonnances du Tribunal dans *Certains produits de tôle d'acier résistant à la corrosion* (RR-98-007). Les demandes d'examen soumises à la Cour fédérale du Canada au sujet de *Certains produits plats de tôle laminés à froid* (RR-97-007) ont été abandonnées. À la fin de l'exercice, la Cour fédérale du Canada n'avait pas encore entendu les demandes de réexamen des ordonnances rendues par le Tribunal dans *Sucre raffiné* (RR-99-006).

Au cours de l'exercice, des groupes spéciaux binationaux ont confirmé l'ordonnance (États-Unis) du Tribunal dans *Certains raccords de tuyauterie en cuivre* (RR-97-008) et son ordonnance (États-Unis) dans *Certains produits plats de tôle d'acier laminés à froid* (RR-97-007). À la fin de l'exercice, la procédure concernant la demande de réexamen des conclusions (États-Unis) du Tribunal

**Examen judiciaire
ou révision par un
groupe spécial
des décisions
rendues en vertu
de la LMSTI**

**Réexamens
relatifs à
l'expiration en
cours à la fin de
l'exercice**

Réexamens relatifs à l'expiration terminés au cours de l'exercice

La procédure du réexamen relatif à l'expiration est semblable à celle de l'enquête définitive de dommage.

À la fin du réexamen relatif à l'expiration, le Tribunal rend une ordonnance avec motifs à l'appui, annulant ou prorogéant l'ordonnance ou les conclusions avec ou sans modifications. Dans le cas où le Tribunal les proroge, les conclusions ou l'ordonnance sont en vigueur pour une période supplémentaire de cinq ans, à moins qu'un réexamen ne soit entrepris et que les conclusions et l'ordonnance ne soient annulées. Si les conclusions ou l'ordonnance sont annulées, les droits antidumping ou compensateurs ne sont plus prélevés sur les importations.

Le Tribunal a effectué quatre réexamens relatifs à l'expiration au cours de l'exercice.

Le 1^{er} mai 2000, le Tribunal a prorogé l'ordonnance qu'il avait rendue dans *Boîtes pour dames et souliers pour dames* (RR-99-003) concernant des importations sous-évaluées de la Chine, avec une modification visant l'annulation de la portion de l'ordonnance qui s'appliquait aux souliers pour dames. L'Association des manufacturiers de chaussures du Canada, représentant les producteurs nationaux, des importateurs et le Conseil canadien du commerce de détail ont participé au réexamen relatif à l'expiration.

Le 5 juin 2000, le Tribunal a prorogé l'ordonnance qu'il avait rendue dans *Tubes soudés en acier au carbone* (RR-99-004) concernant des importations sous-évaluées en provenance de la Corée. Steelco, IPSCO, Ipsat Sidbec et un importateur ont participé au réexamen relatif à l'expiration.

Le 13 septembre 2000, le Tribunal a prorogé son ordonnance dans *Pommes de terre entières* (RR-99-005) concernant des marchandises sous-évaluées importées en Colombie-Britannique en provenance des États-Unis. La B.C. Vegetable Marketing Commission, représentant les producteurs, et la Washington State Potato Commission, représentant des exportateurs, ont participé au réexamen relatif à l'expiration.

Le 3 novembre 2000, le Tribunal a prorogé ses ordonnances dans *Sucre raffiné* (RR-99-006) concernant des importations sous-évaluées en provenance du Danemark, de l'Allemagne, des Pays-Bas, du Royaume-Uni et des États-Unis et les importations subventionnées en provenance de l'Union européenne. Le Tribunal a transformé en une exclusion générique certaines exclusions accordées pour une marque donnée, pour un producteur donné ou pour un importateur donné, accordées à l'issue de l'enquête initiale, et ses ordonnances comprenaient une modification visant l'exclusion d'un autre produit. L'Institut canadien du

Réexamens relatifs à l'expiration

dans *Tapis produit sur machine à souffler* (RR-96-004). Shaw souhaitait obtenir une exclusion visant du tapis fabriqué en se servant de la technologie de teinture à jet brevetée Zimmer Chromojet. Le 20 août 2000, le Tribunal a décidé qu'il n'existait pas de motifs suffisants pour justifier un réexamen de l'ordonnance (RD-2000-001). Le Tribunal était d'avis que la production nationale a venir était imminente et bien étayée par des pièces documentaires et qu'il n'était pas permis de croire, si un réexamen intermédiaire devait être tenu, qu'il s'ensuivrait vraisemblablement une modification de l'ordonnance.

Le paragraphe 76.03(1) de la LMSI prévoit qu'une ordonnance ou des conclusions sont annulées après cinq ans, à moins qu'un réexamen relatif à l'expiration soit entrepris. Le secrétaire publie dans la *Gazette du Canada*, au plus tard 10 mois avant la date d'expiration de l'ordonnance ou des conclusions, un avis d'expiration. L'avis invite les personnes et les gouvernements à présenter des observations sur la question de savoir si l'ordonnance ou les conclusions doivent faire l'objet d'un réexamen et précise les points sur lesquels les renseignements fournis dans le mémoire doivent porter. Si une demande de réexamen est présentée et que le Tribunal est convaincu de son bien-fondé, le Tribunal procède à un tel réexamen. Lorsque le Tribunal décide de procéder au réexamen, il fait publier un avis de réexamen et avise le commissaire de sa décision. L'avis de réexamen relatif à l'expiration est publié dans la *Gazette du Canada* et une copie est envoyée à toutes les parties intéressées connues.

Le Tribunal a fait publier trois avis d'expiration au cours de l'exercice. Dans deux cas, le Tribunal a décidé que le réexamen était fondé et a ouvert un réexamen. Dans *Certains tuyaux soudés en acier inoxydable* (LB-2000-03), le Tribunal n'a reçu aucune demande appuyant un réexamen relatif à l'expiration.

L'objet d'un réexamen relatif à l'expiration est de déterminer si les droits antidumping ou compensateurs sont toujours nécessaires. Le réexamen relatif à l'expiration comporte deux étapes. La première étape est l'enquête du commissaire pour décider si l'expiration de l'ordonnance ou des conclusions causera vraisemblablement la poursuite ou la reprise du dumping ou du subventionnement. Si le commissaire décide qu'une telle poursuite ou reprise est vraisemblable à l'égard de certaines marchandises, la deuxième étape commence, à savoir l'enquête du Tribunal pour décider si l'expiration des conclusions causera vraisemblablement un dommage ou un retard. Dans le cas où le commissaire détermine, à l'égard de certaines marchandises, qu'un tel dommage ou retard ne sera vraisemblablement pas causé, le Tribunal ne tient pas compte de ces marchandises dans sa décision subséquente sur la probabilité d'un dommage et rend une ordonnance en vue d'annuler l'ordonnance ou les conclusions à leur égard.

Décision concernant l'identité de l'importateur

Demandes de réexamen intermédiaire

Aux termes de l'article 90 de la LMSI, le commissaire peut demander au Tribunal de rendre une décision sur la question de savoir laquelle de deux personnes ou plus est l'importateur des marchandises faisant l'objet de droits antidumping ou compensateurs. Dans les cas où la personne que le Tribunal considère comme l'importateur n'est pas celle que le commissaire avait désignée, le Tribunal peut réexaminer ses conclusions initiales de dommage sensible en vertu de l'article 91.

Au cours de l'exercice, le Tribunal n'a pas reçu de demande de décision sur l'identité de l'importateur.

Le Tribunal peut, de sa propre initiative ou à la demande du ministre des Finances, du commissaire, de toute autre personne ou d'un gouvernement, procéder à un réexamen (article 76.01 de la LMSI). Le Tribunal entreprend un réexamen intermédiaire lorsqu'il est convaincu de son bien-fondé et détermine si les conclusions ou l'ordonnance (ou un de leurs aspects) doivent être annulées ou maintenues jusqu'à leur date normale d'expiration, avec ou sans modifications.

Le réexamen intermédiaire peut être justifié lorsqu'il existe une indication raisonnable de l'existence de changements ou faits postérieurs au prononcé de l'ordonnance ou des conclusions ou d'un changement suffisant des circonstances qui ont mené à l'ordonnance ou aux conclusions initiales. Par exemple, depuis le prononcé de l'ordonnance ou des conclusions, la branche de production nationale peut avoir mis fin à la production de marchandises similaires ou il peut avoir été mis fin à des subventions étrangères. Le bien-fondé d'un examen intermédiaire peut aussi s'appuyer sur suffisamment de faits qui, bien que réels, ne pouvaient être connus lors du prononcé de l'ordonnance ou des conclusions par l'exercice d'une diligence raisonnable.

Le Tribunal a reçu deux demandes de réexamen intermédiaire au cours de l'exercice.

Le 15 février 2000, le Tribunal a reçu, de la Garlic Growers Association of Ontario, une demande de réexamen des conclusions que le Tribunal a rendues dans *All frais* (NQ-96-002); cette demande visait à obtenir que les conclusions soient modifiées pour imposer des droits antidumping durant toute l'année, plutôt que du 1^{er} juillet au 31 décembre comme le prévoient les conclusions présentement en vigueur. Le 27 juin 2000, le Tribunal a décidé que, puisqu'il n'avait pas compétence pour étendre la portée des conclusions, un réexamen intermédiaire n'était pas justifié (RD-99-002).

Le 15 avril 2000, Shaw Industries, Inc. (Shaw) a déposé auprès du Tribunal une demande de réexamen intermédiaire de l'ordonnance rendue par le Tribunal

réduction des droits antidumping allait permettre de plus à la fois à Nycomed

Amersham Limited et à Bracco Diagnostics Canada Inc. de continuer de

représenter un autre choix que MCI pour les acheteurs d'opacifiants, ce qui

doivent pouvoir disposer d'un choix de produits pour procurer les meilleures

conditions de sécurité et de confort aux patients. De même, un prix, pour les

opacifiants importés, légèrement plus élevé que durant la période visée par

l'enquête de dommage, allait offrir à la branche de production nationale une

certaine protection contre le dumping dommageable et donner à MCI une marge

de manœuvre pour augmenter ses recettes.

Le Tribunal a déterminé un « prix d'intérêt public » pour les opacifiants qui

mettrait en équilibre les divers intérêts publics. Bien que ce prix d'intérêt public

ait été supérieur au prix moyen récemment obtenu sur le marché, il était beaucoup

moins élevé que le prix estimatif associé à des droits au plein montant. La mise en

œuvre de la recommandation du Tribunal devait avoir pour effet de réduire de

plus de 60 p. 100 les valeurs normales. La recommandation était fondée sur la

méthode appliquée par l'ADRC pour exécuter les recours antidumping et prélever

les droits.

Le 29 août 2000, le Tribunal a reçu des demandes, en provenance de

plusieurs détaillants, importateurs et exportateurs d'appareils ménagers ainsi que

d'un groupe de protection de l'environnement appuyant la tenue d'une enquête

d'intérêt public visant à éliminer ou à réduire les droits antidumping appliqués par

suite des conclusions de dommage du Tribunal dans *Certains réfrigérateurs, lave-*

vaisselle et sècheuses (NQ-2000-001). Le 12 septembre 2000, le producteur

national et un importateur ont présenté des observations s'opposant à une enquête

d'intérêt public.

Le 3 octobre 2000, dans ses considérations (PB-2000-002), le Tribunal a

conclu qu'il n'était pas convaincu qu'il existait une question d'intérêt public qui

justifiait une enquête plus poussée. Bien que des augmentations de prix soient une

conséquence naturelle de l'élimination du dumping dommageable, la concurrence

des prix entre les fournisseurs d'appareils ménagers, y compris WCI et

Whirlpool, continuait d'être vive sur le marché canadien. Les marges moyennes

pondérées de dumping étaient relativement faibles, et les consommateurs

continuaient d'avoir accès à une gamme complète de produits. Le Tribunal a

précisé que, pour décider d'ouvrir une enquête d'intérêt public, il doit constater

que des éléments de preuve clairs et contraignants montrent l'existence d'une

incidence actuelle ou éventuelle qui, dépassant les intérêts commerciaux des

intervenants de la branche de production, débordent dans le domaine public.

Limited. Plusieurs importateurs et exportateurs et le gouvernement d'un pays exportateur participent à l'enquête.

L'activité du Tribunal relative aux enquêtes définitives de dommage qu'il a menées au cours de l'exercice est résumée au tableau 2.

Le Tribunal peut ouvrir une enquête d'intérêt public après avoir rendu des conclusions de dommage causé par des importations sous-évaluées ou subventionnées. Le Tribunal peut décider, de sa propre initiative ou sur demande présentée par toute personne intéressée, en se fondant sur des motifs raisonnables, que l'assujettissement des marchandises en cause à une partie ou au plein montant des droits prévus pourrait être contraire à l'intérêt public. Le cas échéant, le Tribunal tient une enquête d'intérêt public aux termes de l'article 45 de la LMSI. À l'issue de l'enquête, le Tribunal peut transmettre au ministre des Finances un rapport énonçant son avis que les droits devraient être réduits ainsi que le niveau de réduction qu'il recommande. Le Tribunal a reçu deux demandes d'enquête d'intérêt public au cours de l'exercice.

Après que le Tribunal eut rendu des conclusions de dommage dans *Opacifiants iodés* (NQ-99-003), plusieurs personnes intéressées, y compris des associations médicales, des défenseurs de la santé publique, des associations de radiologues, des hôpitaux, des groupes d'acheteurs, des importateurs et le commissaire de la concurrence, ont présenté au Tribunal des observations appuyant la tenue d'une enquête d'intérêt public. La société MCI, le seul producteur national, s'est opposée à la tenue d'une enquête d'intérêt public. Après avoir examiné les observations, le Tribunal était d'avis qu'il existait divers facteurs qui justifiaient une enquête plus poussée. Le Tribunal a ouvert une enquête d'intérêt public (PB-2000-001) le 15 juin 2000.

L'enquête du Tribunal a compris une audience publique, au cours de laquelle elle a entendu les témoignages de personnes représentant les parties qui avaient exprimé leur intérêt pour cette question. Après l'enquête, le Tribunal a transmis un rapport au ministre des Finances dans lequel il a exprimé l'opinion qu'il n'était pas dans l'intérêt public d'imposer des droits antidumping au plein montant sur les opacifiants iodés. Le rapport, déposé le 29 août 2000, comprenait une recommandation visant la réduction des droits et la façon dont cette recommandation devrait être mise en œuvre.

Le Tribunal a déterminé qu'une réduction des droits antidumping serait une réponse aux préoccupations concernant le fait qu'une augmentation considérable des prix des opacifiants exercerait une pression sur les budgets des hôpitaux, ce qui entraînerait une réduction du nombre d'actes auprès des patients. Une

Enquêtes en cours à la fin de l'exercice

font l'élevage du bétail et qui cultivent aussi du maïs pour nourrir leur bétail sont capables de réaliser des synergies entre leurs opérations d'élevage du bétail et celles de culture céréalière. Il est ressorti des éléments de preuve que leurs coûts de production sont de beaucoup inférieurs aux coûts de production moyens de la branche de production. Les utilisateurs du maïs à la ferme sont aussi effectivement isolés de la plupart des fluctuations de prix du marché. Cette indépendance à l'égard des prix du marché, combinée avec des coûts de production moindres que la moyenne place ces utilisateurs dans une situation tout à fait différente de celle des producteurs de maïs commerciaux, relativement aux effets des importations sous-évaluées et subventionnées. De plus, le maïs cultivé pour l'utilisation à la ferme afin de nourrir le bétail représentait une proportion importante et grandissante de la branche de production du maïs-grain dans l'Ouest canadien, atteignant jusqu'à 30 p. cent de la production totale selon certaines estimations.

Ainsi, même si plusieurs producteurs canadiens qui vendaient leur maïs sur le marché commercial avaient subi un dommage causé par les importations en question, quand la production n'avait pas subi de dommage, représentée par l'utilisation à la ferme, a été combinée avec la proportion des ventes commerciales ayant atteint des résultats raisonnables, il ne faisait guère de doute que le seuil de dommage représenté par l'expression « toute ou presque toute » n'avait pas été satisfait dans cette affaire.

Il y avait trois enquêtes en cours à la fin de l'exercice : *Ail, frais ou congelé* (NQ-2000-006), *Certaines barres d'armature pour béton* (NQ-2000-007) et *Certaines toiles d'acier résistant à la corrosion* (NQ-2000-008).

L'enquête concernant l'ail vise les importations sous-évaluées de la Chine et du Vietnam. Il existe plus de 100 producteurs d'ail, dont la plupart sont représentés par la Garlic Growers Association of Ontario.

L'enquête concernant les barres d'armature pour béton vise les importations sous-évaluées de l'Indonésie, du Japon, de la Lettonie, de la Moldova, de la Pologne, du Taipei chinois et de l'Ukraine. Les producteurs canadiens de barres d'armature pour béton sont Steelco, Co-Steel Inc., Gerdau Courtoise, Gerdau MIRMA Steel, Ispat Sidbec Inc. (Isbat Sidbec) et Slater Steel. Deux exportateurs participent à l'enquête.

L'enquête concernant les toiles d'acier résistant à la corrosion vise les importations sous-évaluées de la Chine, de la Malaisie, de la Fédération de Russie, de l'Afrique du Sud et du Taipei chinois ainsi que les importations sous-évaluées et subventionnées de l'Inde. Les producteurs canadiens de toiles d'acier résistant à la corrosion sont Dofasco Inc., Stelco, Sorevco et Continuous Colour Coat

le marché canadien, à des prix sous-évalués, des chausssures Sorel fabriquées en Chine. Il pourrait s'ensuivre une déstabilisation rapide des prix sur le marché de la chaussure d'hiver canadienne traditionnelle, la pièce maîtresse de la branche de production nationale. Cette considération, combinée à l'immense capacité de production de la Chine, à son orientation marquée vers les exportations et à sa propension historique au dumping, ont porté le Tribunal à conclure que la branche de production nationale ferait face à une menace de dommage sensible causé par les importations sous-évaluées originaires de la Chine. Le Tribunal a exclu de ses conclusions les chausssures étanches en suède floqué et les bottes en nylon entièrement étanches, pour femmes, dont la semelle extérieure était de conception autre qu'en forme de chausse-pied.

L'enquête mettait en cause des marchandises sous-évaluées et subventionnées en provenance des États-Unis et importées au Canada pour utilisation ou consommation à l'ouest de la frontière Manitoba-Ontario. Les producteurs représentés par la Manitoba Corn Growers Association Inc. représentaient environ 92 p. 100 de la production de maïs-grain dans l'ouest canadien. Plusieurs importateurs et utilisateurs de maïs-grain ont aussi participé à l'enquête.

Le Tribunal a remarqué que le critère de dommage pour un marché régional est très strict. Il doit ressortir des éléments de preuve que les marchandises en question ont causé un dommage aux producteurs de « toute ou presque toute » la production de maïs-grain de l'ouest canadien.

À cet égard, le Tribunal a déterminé que des importations sous-évaluées et subventionnées en provenance des États-Unis avaient entraîné la baisse des prix du maïs vendu dans l'ouest canadien, causant un dommage financier à plusieurs producteurs nationaux. Par contre, le Tribunal a aussi déterminé qu'il y avait une certaine proportion de la production commerciale qui n'avait pas subi de dommage sensible. Il est ressorti des éléments de preuve que certains producteurs avaient réussi à obtenir des prix plus élevés que les prix moyens pour leur maïs, malgré la présence d'importations sous-évaluées et subventionnées en provenance des États-Unis. De plus, certains grands utilisateurs de maïs payent un prix supérieur au prix moyen pour le maïs d'origine nationale étant donné que leur production exige des intrants qui présentent des qualités ou des caractéristiques particulières. Il était manifeste que certains producteurs ont été en mesure d'obtenir des taux de rendement raisonnables, même à la campagne agricole 1999-2000 au moment où les prix des importations des États-Unis étaient à leurs plus bas niveaux.

De plus, le Tribunal a identifié une autre catégorie de producteur de maïs qui n'était pas affectée par le dumping et le subventionnement des importations de la même façon que les producteurs qui exploient leur entreprise sur le marché commercial. Le Tribunal a observé que les producteurs agricoles diversifiés qui

Le Tribunal a aussi conclu que l'importante baisse de part de marché d'Atlas allié à l'érosion des prix durant 1999 avaient eu une incidence directe sur le rendement financier de cette dernière. La détérioration du rendement financier d'Atlas en 1999 et l'absence de toute amélioration sensible au premier trimestre de 2000 s'étaient produites malgré les conclusions de dommage précédentes. En outre, le Tribunal n'était pas convaincu que l'un quelconque des autres facteurs qu'il avait examinés avait contribué au dommage causé par les importations visées.

L'enquête visait les importations sous-évaluées de la Chine. La branche de production nationale se composait de 10 producteurs, dont 5 étaient membres de l'Association des manufacturiers de chaussures du Canada et représentaient environ 99 p. 100 de la production collective nationale de chaussures et semelles extérieures étanches. Plusieurs importateurs ainsi que le Conseil canadien du commerce de détail ont participé à l'enquête.

Chaussures et semelles extérieures étanches
 NQ-2000-004
 Conclusions :
 menace de dommage
 (8 décembre 2000)

Même si les importations sous-évaluées de la Chine avaient augmenté de façon notable, bien qu'à partir de faibles volumes, durant la période qui avait précédé la décision provisoire, le Tribunal n'était pas convaincu qu'elles avaient causé un dommage à la branche de production nationale. Un recul du marché de la chaussure étanche, qui avait été le résultat de conditions climatiques plus douces, avait eu une incidence négative considérable sur les résultats de la branche de production nationale. Le temps plus doux avait aussi suscité une évolution de la demande dans le sens des bottes plus légères, alors que la production domestique avait surtout été axée sur les types plus traditionnels de bottes d'hiver. Environ les deux tiers des importations visées se composaient de chaussures étanches en suède floqué, un produit qui répondait à la demande des consommateurs à l'endroit de chaussures étanches légères, d'allure mode. Un autre produit qui avait été importé de la Chine était une botte de nylon, entièrement étanche, dont la semelle était faite autre qu'en forme de Chaloupe et qui satisfaisait aussi à une demande semblable des consommateurs. La branche de production nationale ne fabriquait pas ce type de produit. En outre, bien que certains éléments de preuve indiquent que d'autres importations sous-évaluées pouvaient avoir eu un certain effet néfaste, le Tribunal était d'avis que le dommage n'était pas sensible.

Cependant, le Tribunal était d'avis que l'acquisition de la marque Sorel, par Columbia Sportswear Company (Columbia), auparavant détenue par un grand producteur canadien, Kaufman Footwear, Division of William H. Kaufman Inc., qui avait déclaré faillite peu après la décision provisoire, pouvait avoir des conséquences graves sur la branche de production nationale. En fait, il est ressorti des éléments de preuve l'éventualité vraisemblable que Columbia puisse offrir sur

Dans le cadre de l'examen des facteurs autres que le dumping qui auraient pu causer un dommage à Camco, le Tribunal a fait observer que de tels autres facteurs étaient presque toujours présents. Il a ajouté qu'il n'était pas nécessaire, toutefois, que le dumping soit l'unique cause ou la cause principale du dommage, mais qu'il devait être démontré que le dommage causé par le dumping était un dommage sensible. Le Tribunal n'était pas convaincu que les autres facteurs qui il avait examinés pouvaient expliquer l'importante perte de part du marché de certains réfrigérateurs, lave-vaisselle et sècheuses. Ces autres facteurs comprenaient les pratiques de vente et de commercialisation de Camco, ses stratégies et décisions commerciales, ses politiques de vente sur les marchés des constructeurs-promoteurs immobiliers et des investisseurs de Camco et la rationalisation de la qualité du produit, la taille de l'investissement de Camco et la rationalisation de sa production, ses ventes à l'exportation, l'incidence des importations d'appareils ménagers non visés ainsi que le peu de succès de Camco chez Sears.

Le Tribunal a exclu de ses conclusions les réfrigérateurs d'un volume de 18,5 pi³ et plus, les lave-vaisselle munis d'un intérieur en acier inoxydable, les sècheuses au gaz ou électriques munies d'un plateau de commande à l'avant, d'un dessus amovible et d'un châssis conçu pour permettre qu'elles soient superposées à des laveuses ainsi que les réfrigérateurs, les lave-vaisselle et les sècheuses destinées à servir dans le cadre du programme *Habitat for Humanity*.

L'enquête visait des importations sous-évaluées et subventionnées du Brésil et des importations subventionnées de l'Inde. Le seul producteur national de barres en acier inoxydable était Atlas Specialty Steels (Atlas). Un exportateur et un importateur ont aussi participé à l'enquête.

Après avoir déterminé que l'acquisition d'Atlas par Slater Steel Inc. durant l'enquête n'avait pas d'incidence sur ce qui constitue la branche de production nationale, le Tribunal a conclu qu'Atlas avait subi une détérioration sensible de rendement sous forme de perte de volume des ventes et de part de marché, d'érosion et de compression des prix et de baisse de recettes et de rentabilité. De plus, le dommage subi par Atlas à cause des importations des marchandises visées a manifestement été sensible. Les éléments de preuve montraient que les importations de barres en acier inoxydable en provenance des pays désignés avaient augmenté de façon persistante et avaient remplacé les importations des pays, à l'exception de l'Inde, qui avaient été désignés dans les conclusions rendues à l'issue de deux enquêtes précédentes, les enquêtes nos NQ-98-001 et NQ-98-003. En 1999, les ventes de barres en acier inoxydable d'Atlas avaient de ce fait affiché un net recul et Atlas avait perdu une part importante de marché. Malgré la vigueur du marché au premier semestre de 2000, Atlas n'avait pas pu accroître sa part de marché.

**Certaines barres
rondes en acier
inoxydable**
NQ-2000-002
Conclusions :
dommage
(27 octobre 2000)

les contraintes afférentes à l'approvisionnement national, l'amélioration de l'efficacité des producteurs nationaux qui a entraîné les prix à la baisse, l'augmentation des coûts et des frais financiers non liés à la production de toiles, la concurrence au sein même de la branche de production et l'incidence, sur le marché canadien, des prix des marchandises en provenance des États-Unis. Le Tribunal a examiné les effets de ces autres facteurs afin de ne pas imputer aux marchandises visées un dommage causé par ces autres facteurs.

L'enquête concernait les importations sous-évaluées de trois sortes d'appareils ménagers, les réfrigérateurs, les lave-vaisselle et les sècheuses fabriqués par White Consolidated Industries, Inc. (WCI) et Whirlpool Corporation (Whirlpool) des États-Unis. Le seul producteur national était Camco Inc. (Camco). Plusieurs exportateurs, importateurs, distributeurs et détaillants d'appareils ménagers et le commissaire à la concurrence ont participé à l'enquête. Le Tribunal a conclu que les importations sous-évaluées avaient causé un dommage sensible à la production de réfrigérateurs, de lave-vaisselle et de sècheuses de Camco. Le Tribunal était d'avis que les importations sous-évaluées avaient contraint Camco à s'aligner sur les bas prix des importations sous-évaluées ou à accepter de perdre des ventes. À cet égard, le Tribunal était d'avis que le prix était un facteur clé dans la prise de décision de l'acheteur relativement à une gamme donnée d'appareils ménagers et que l'importance des marges de dumping donnait aux importations une grande marge de manœuvre permettant d'obtenir ou de maintenir une part de marché. Les éléments de preuve ont montré que Camco avait subi une perte notable de part de marché en raison directe de l'augmentation des ventes des importations à des prix de dumping. En outre, le Tribunal a conclu que Camco avait subi une compression des prix et, dans une moindre mesure, une érosion des prix. Le Tribunal a conclu que l'ampleur de la diminution de part de marché de Camco pour chacun des produits en cause, particulièrement dans une période de croissance du marché, était importante et constituait un dommage à la production de marchandises similaires de la branche de production nationale.

Bien que le Tribunal ait été d'avis qu'une grande partie du dommage avait été subie par rapport aux segments des constructeurs-promoteurs immobiliers et des constructeurs-distributeurs autorisés du marché, il a aussi conclu que Camco avait subi une perte notable de part de marché sur les segments du marché des détaillants. Le Tribunal a aussi conclu que les marges brutes dégagées par Camco pour les réfrigérateurs, les lave-vaisselle et les sècheuses avaient diminué de façon importante. Le Tribunal était convaincu que ces diminutions des marges brutes étaient liées, dans une mesure notable, à la concurrence importante et croissante des importations sous-évaluées.

Conclusions :
dommage
(1^{er} août 2000)

NQ-2000-001

Certains réfrigérateurs, lave-vaisselle et sècheuses

sensible. Les éléments de preuve ont montré que les importations sous-évaluées avaient fait l'objet d'offres de prix agressives chez plusieurs clients et que MCI avait perdu un client important. Tout en reconnaissant que d'autres facteurs avaient contribué à la baisse des prix sur le marché canadien, comme le pouvoir d'achat des groupes d'acheteurs, les pressions exercées sur les budgets des soins de santé, le cycle de vie des produits et l'expiration de la protection par brevet, le Tribunal a été d'avis que l'ampleur de l'érosion des prix pouvait uniquement être imputable au dumping.

En réponse à une observation selon laquelle MCI avait entraîné les prix à la baisse, le Tribunal était d'avis que les importateurs avaient le droit de livrer lorsque le produit importé était offert à des prix sous-évalués qui causent un dommage à la branche de production nationale, la limite de ce droit était franche. Quant au fait que la vaste majorité de la production de MCI était exportée, le Tribunal a conclu que le rendement à l'exportation de la MCI avait contribué avantageusement au rendement global de la branche de production, puisqu'il avait aidé, en répartissant les frais fixes sur un plus grand nombre d'unités, à compenser les effets dommageables du dumping sur le marché national.

Le Tribunal a conclu que les ventes d'acier au carbone sous-évaluées et subventionnées visées, à des prix sensiblement inférieurs aux prix de vente des producteurs nationaux et des pays non désignés avaient causé un dommage sensible à la branche de production nationale. Le Tribunal était d'avis que les importations visées avaient fait des gains notables en termes de volume des ventes et de part de marché en 1998 et en 1999, et ce au dépens des producteurs nationaux. Dans le cadre de leurs efforts pour regagner le volume des ventes et la part de marché qu'ils avaient perdus à la fin de 1998 et en 1999, les producteurs nationaux ont continué de réduire leurs prix de vente pour les aligner sur les prix plus bas des importations visées. Ensemble, la perte de volume des ventes et de part de marché ainsi que l'érosion des prix avaient entraîné une détérioration du rendement financier des producteurs nationaux.

Des exportateurs de tôles d'acier au carbone ont soutenu que d'autres facteurs avaient causé un dommage aux producteurs nationaux. Ces facteurs comprenaient

**Certaines tôles d'acier
au carbone**

NQ-99-004

Conclusions :

tôles d'acier au carbone : Algoma Steel Inc., Stelco Inc. (Stelco) et IPSCO Inc. (IPSCO). Plusieurs exportateurs du Brésil, de l'Indonésie, de l'Inde et de

(27 juin 2000)

Conclusions :
dommage
(1^{er} mai 2000)

NQ-99-003

Opacifiants iodés

Enquêtes
définitives de
dommage
terminées au
cours de
l'exercice

contestée par les importateurs et les exportateurs. Après contre-interrogatoire par les parties et examen du Tribunal, chaque partie a l'occasion de répondre aux arguments de l'autre partie et de résumer ses propres arguments. Dans de nombreuses enquêtes, le Tribunal convoque des témoins qui sont bien informés sur la branche de production et sur le marché en cause. Des parties peuvent également chercher à obtenir des exclusions des conclusions, dans le cas où le Tribunal rend des conclusions de dommage sensible à une branche de production nationale. Le Tribunal doit rendre ses conclusions dans les 120 jours suivant la date de la décision provisoire du commissaire. Le Tribunal dispose d'une période supplémentaire de 15 jours pour présenter un exposé des motifs de ses conclusions. Les conclusions de dommage sensible ou de retard, ou de menace de dommage sensible à une branche de production nationale, représentent l'autorité légale pour l'imposition de droits antidumping ou compensateurs par l'ADRC.

Le Tribunal a effectué six enquêtes définitives de dommage au cours de l'exercice. Il s'agit de *Certains opacifiants iodés* (NQ-99-003), *Certaines tôles d'acier au carbone* (NQ-99-004), *Certains réfrigérateurs, lave-vaisselle et sècheuses* (NQ-2000-001), *Certaines barres rondes en acier inoxydable* (NQ-2000-002), *Chaussures et semelles extérieures étanches* (NQ-2000-004) et *Certains maïs-grain* (NQ-2000-005). En 1999, les marchés canadiens pour ces produits étaient évalués à 20 millions de dollars pour les opacifiants iodés, 520 millions de dollars pour les tôles d'acier au carbone, 280, 175 et 160 millions de dollars, respectivement, pour les réfrigérateurs, les lave-vaisselle et les sècheuses. 30 millions de dollars pour les barres rondes en acier inoxydable et 100 millions de dollars pour les chaussures et couvre-chaussures en caoutchouc. Le marché régional de l'Ouest canadien, pour ce qui concerne le maïs-grain en 1999, était évalué à 75 millions de dollars.

Le Tribunal a suspendu son enquête sur le *Papier de bingo* (NQ-2000-003), à la suite de l'acceptation, par le commissaire, d'un acte d'engagement de la part de l'exportateur.

L'enquête concernait des importations sous-évaluées en provenance des États-Unis. Le seul producteur national était Mallinckrodt Canada Inc. (MCI), une filiale à part entière de Mallinckrodt Inc. Les opacifiants iodés sont des agents d'imagerie radiographique utilisés dans le cadre de méthodes diagnostiques en radiographie médicale.

Le Tribunal a conclu que les importations sous-évaluées avaient causé un dommage à MCI, sous forme d'érosion des prix, et que le dommage était

sur les importations à compter de la date de la décision provisoire. Le commissaire poursuit son enquête jusqu'à ce qu'une décision définitive soit rendue à l'égard du dumping ou du subventionnement.

Comme pour une enquête préliminaire de dommage, le Tribunal essaie de s'assurer que toutes les parties intéressées sont informées de l'ouverture de l'enquête. Il fait donc publier un avis d'ouverture d'enquête dans la *Gazette du Canada* et en envoie une copie aux personnes qui, à sa connaissance, sont des parties intéressées.

Lorsqu'il mène une enquête définitive de dommage, le Tribunal demande des renseignements aux parties intéressées, reçoit des observations et tient des audiences publiques. Le personnel du Tribunal effectue des recherches poussées pour chacune des enquêtes. Le Tribunal envoie des questionnaires aux fabricants, aux importateurs et aux acheteurs nationaux et aux fabricants étrangers. Les données provenant des réponses aux questionnaires servent de fondement aux rapports du personnel, ces derniers mettant l'accent sur les facteurs dont le Tribunal doit tenir compte pour rendre des décisions concernant le dommage sensible ou le retard, ou la menace de dommage sensible à une branche de production nationale. Ces rapports deviennent une partie du dossier et sont mis à la disposition des conseillers et des parties.

Les parties à la procédure peuvent défendre leur propre cause ou se faire représenter par des conseillers. Les renseignements confidentiels ou délicats d'un point de vue commercial sont protégés conformément aux dispositions de la Loi sur le TCCB.

Le Règlement sur les mesures spéciales d'importation prévoit des facteurs qui peuvent être examinés par le Tribunal lorsqu'il détermine si le dumping ou le subventionnement de marchandises a causé un dommage sensible ou un retard, ou menace de causer un dommage sensible à une branche de production nationale. Ces facteurs comprennent, entre autres, le volume des marchandises qui font l'objet de dumping ou de subventionnement, les effets qu'ont ces marchandises sur les prix et l'incidence des marchandises qui font l'objet de dumping ou de subventionnement sur la production, les ventes, la part de marché, les bénéfices, les emplois et l'utilisation de la capacité de production.

Le Tribunal tient une audience publique environ 90 jours après l'ouverture de l'enquête, celle-ci débutant normalement juste avant que le commissaire rende une décision définitive de dumping ou de subventionnement. À l'audience publique, les producteurs nationaux essaient de convaincre le Tribunal que le dumping ou le subventionnement des marchandises a causé un dommage sensible ou un retard, ou menace de causer un dommage sensible à une branche de production nationale. La position des producteurs nationaux peut alors être

**Enquêtes
préliminaires de
dommage
terminées au
cours de
l'exercice**

**Avis donné aux
termes de
l'article 37 de la
LMSI**

**Enquêtes
définitives de
dommage**

Si le Tribunal conclut que les éléments de preuve indiquent, de façon raisonnable, que le dumping ou le subventionnement a causé un dommage ou un retard, ou menace de causer un dommage, il rend sa décision en ce sens et le commissaire continue l'enquête de dumping ou de subventionnement. Si les éléments de preuve n'indiquent pas, de façon raisonnable, que le dumping ou le subventionnement a causé un dommage ou un retard, ou menace de causer un dommage, le Tribunal fait alors clôturer l'enquête et le commissaire met fin à l'enquête de dumping ou de subventionnement. Le Tribunal publie ses motifs dans les 15 jours suivant sa décision.

Le Tribunal a effectué cinq enquêtes préliminaires de dommage au cours de l'exercice. Il s'agit de *Certains maïs-grain* (P1-2000-001), *Ail* (P1-2000-002), *Certaines barres d'armature pour béton* (P1-2000-003), *Certaines tôles d'acier résistant à la corrosion* (P1-2000-005) et *Certains feuillards et tôles plats en acier au carbone et en acier allié, laminés à chaud* (P1-2000-006). Le Tribunal a mis fin à son enquête portant sur les *Presses à visessoreuses de pâte* (P1-2000-004) après que le commissaire eut mis fin à son enquête de dumping. Une enquête préliminaire de dommage était toujours en cours à la fin de l'exercice.

Lorsque le commissaire décide de ne pas ouvrir d'enquête en matière de dumping ou de subventionnement parce que les éléments de preuve n'indiquent pas, de façon raisonnable, l'existence d'un dommage, le commissaire ou la partie plaignante peut, aux termes de l'article 33 de la LMSI, demander au Tribunal de se prononcer sur la question de savoir si les éléments de preuve dont dispose le commissaire indiquent, de façon raisonnable, que le dumping ou le subventionnement a causé un dommage sensible ou un retard, ou menace de causer un dommage sensible à une branche de production nationale.

L'article 37 de la LMSI exige que le Tribunal donne son avis sur la question dans les 30 jours. Le Tribunal rend sa décision, sans tenir d'audience publique, en se fondant sur les renseignements dont disposait le commissaire lorsque la décision concernant l'ouverture a été rendue.

Le Tribunal n'a pas reçu de demande d'avis aux termes de l'article 33 de la LMSI au cours de l'exercice.

Lorsque le commissaire rend une décision provisoire de dumping ou de subventionnement, le Tribunal fait ouvrir une enquête définitive de dommage aux termes de l'article 42 de la LMSI. L'ADRC peut imposer des droits provisoires

CHAPITRE III

ENQUÊTES DE DOMMAGE ET RÉEXAMENS EN MATIÈRE DE DUMPING ET DE SUBVENTIONNEMENT

Processus

Aux termes de la LMSI, l'ADRC peut imposer des droits antidumping et compensateurs lorsqu'un dommage est causé aux producteurs nationaux par des marchandises exportées au Canada, soit :

- à des prix inférieurs aux prix de vente sur le marché intérieur ou à des prix inférieurs au coût de production (dumping), ou
- qui ont été produites grâce à certains types de subventions gouvernementales ou à d'autres formes d'aide (subventionnement).

Les décisions concernant l'existence de dumping et de subventionnement relèvent de l'ADRC. Le Tribunal détermine si ce dumping ou ce subventionnement a causé un « dommage sensible » ou un « retard », ou menace de causer un dommage sensible à une branche de production nationale.

Enquêtes préliminaires de dommage

Le processus débute lorsqu'un producteur canadien ou une association de producteurs canadiens demande redressement du préjudice dumping ou subventionnement dommageable en déposant une plainte auprès du commissaire de l'ADRC. Si le commissaire ouvre alors une enquête de dumping ou de subventionnement, le Tribunal procède à une enquête préliminaire de dommage aux termes du paragraphe 34(2) de la LMSI. Le Tribunal essaie de s'assurer que toutes les parties intéressées en sont informées. Il fait donc publier un avis d'ouverture d'enquête préliminaire de dommage dans la *Gazette du Canada* et en envoie une copie aux personnes qui, à sa connaissance, sont des parties intéressées.

Dans le cadre de l'enquête, le Tribunal détermine si les éléments de preuve indiquent, « de façon raisonnable », que le dumping ou le subventionnement a causé un dommage ou un retard, ou menace de causer un dommage. Le Tribunal se fonde principalement sur les renseignements reçus du commissaire et les exposés reçus des parties intéressées. Le Tribunal tente d'obtenir l'opinion des parties sur la question de savoir quelles sont les marchandises similaires et quels sont les producteurs nationaux compris dans la branche de production nationale. Le Tribunal ne publie normalement pas de questionnaires et ne tient normalement pas d'audience et rend sa décision provisoire dans les 60 jours suivant l'ouverture de son enquête.

Mandat législatif du Tribunal (suite)

Article	Attributions
76	Réexamins des conclusions de dommage entrepris par le Tribunal ou à la demande du commissaire ou d'autres personnes intéressées
76.01	Réexamins intermédiaires
76.02	Réexamins sur renvoi d'ordonnances rendues par le Tribunal et nouvelles auditions
76.03	Réexamins relatifs à l'expiration
76.1	Réexamins des conclusions de dommage entrepris à la demande du ministre des Finances
89	Décisions sur l'identité de l'importateur
Loi sur les douanes	
67	Appels de décisions du commissaire visant la valeur en douane et l'origine et le classement de marchandises importées
68	Appels interjetés auprès de la Cour fédérale du Canada
70	Consultations demandées par le commissaire relativement au classement tarifaire ou à la valeur en douane de marchandises
Loi sur la taxe d'accise	
81.19, 81.21, 81.22, 81.23, 81.25 et 81.33	Appels à l'égard de cotisations et de déterminations du ministre du Revenu national
81.32	Demandes de prolongation du délai pour opposition ou appel
Loi sur le droit à l'exportation de produits de bois-d'œuvre	
18	Appels à l'égard de cotisations et de déterminations du ministre du Revenu national
Loi sur l'administration de l'énergie	
13	Déclarations des redevances d'exportation sur le pétrole

Article	Attributions
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Loi sur le TCCE

18	Enquêtes sur des questions touchant les intérêts économiques ou commerciaux du Canada sur saisine du gouverneur en conseil
19	Enquêtes sur les questions relatives aux tarifs douaniers sur saisine du ministre des Finances
19.01	Enquêtes sur les mesures de sauvegarde concernant les marchandises importées des États-Unis et du Mexique
19.02	Examens à mi-période des mesures de sauvegarde et rapport
20	Enquêtes sur les mesures de sauvegarde concernant l'importation au Canada de marchandises et enquêtes sur la prestation de services au Canada par des personnes n'y résidant pas habituellement
23	Plaintes des producteurs nationaux visant des mesures de sauvegarde
23(1.01) et (1.02)	Plaintes des producteurs nationaux visant des mesures de sauvegarde concernant les marchandises importées des États-Unis et du Mexique
30.08 et 30.09	Mesures de sauvegarde
30.11	Plaintes des fournisseurs potentiels visant des contrats spécifiques
LMSI	
33 et 37	Avis donné au commissaire
34, 35 and 36	Enquête préliminaire
37.1	Décision provisoire de dommage
42	Enquêtes concernant le dommage causé par le dumping et le subventionnement de marchandises
43	Conclusions du Tribunal concernant le dommage
44	Reprise de l'enquête (sur renvoi de la Cour fédérale du Canada ou d'un groupe spécial binational)
45	Intérêt public
46	Avis donné au commissaire
61	Appels de réexamens du commissaire effectués en application de l'article 59 concernant la question de savoir si les marchandises importées sont de même description que les marchandises auxquelles s'appliquent les conclusions du Tribunal, les valeurs normales et les prix à l'exportation ou les subventions à l'exportation

PRÉSIDENT

Pierre Gosselin

VICE-PRÉSIDENTS

Raynald Guay*

Patricia M. Close

Richard LaFontaine

MEMBRES

Peter F. Thalheimer

Zdenek Kvarda

James A. Ogilvy

Arthur B. Trudeau**

Ellen Fry

SECRÉTARIAT

Secrétaire

Michel P. Granger

DIRECTION DE LA RECHERCHE

Directeur exécutif, Recherche

Ronald W. Erdmann

DIRECTION DES SERVICES JURIDIQUES

Avocat général

Gerry Stobo*

** A démissionné au cours de l'exercice
Membre vacataire – mandat terminé au cours de l'exercice

Par l'intermédiaire du Comité de la magistrature et du barreau (Tribunal/Association du Barreau canadien), le Tribunal fournit une tribune pour discuter des questions d'importance avec le Barreau. Le comité inclut également des experts-conseils en commerce. Le Tribunal tient également des réunions avec des représentants du Barreau, des divers secteurs industriels et autres qui comparassent ou qui peuvent comparaître devant le Tribunal, et ce, afin d'échanger des opinions sur les nouvelles procédures considérées par le Tribunal avant qu'elles ne soient publiées sous forme de lignes directrices ou de notes de procédures. Le Tribunal tient aussi des séances d'information sur sa procédure à l'intention des ministères du gouvernement fédéral et des associations professionnelles.

Mode de fonctionnement

Le Tribunal tient des audiences publiques dans le cadre de presque toutes les responsabilités qu'il assume. Celles-ci ont habituellement lieu dans les locaux du Tribunal à Ottawa (Ontario), mais, le cas échéant, elles peuvent se tenir ailleurs au Canada, en personne ou par voie de vidéoconférence. Le Tribunal applique des règles et une procédure semblables à celles d'une cour de justice, mais d'une façon plus souple. La Loi sur le TCCB prévoit que les causes sont entendues en général par trois membres, de la manière « la plus efficace, la plus équitable et la plus expéditive » dans les circonstances. Le Tribunal peut citer des témoins à comparaitre et exiger des parties qu'elles produisent des renseignements. La Loi sur le TCCB renferme des dispositions qui protègent les renseignements confidentiels. Seuls les conseillers indépendants qui ont déposé un acte de déclaration et d'engagement de confidentialité peuvent avoir accès aux renseignements confidentiels.

Les décisions du Tribunal peuvent, selon le cas, être réexaminées ou portées en appel devant la Cour fédérale du Canada et, finalement, la Cour suprême du Canada, ou devant un groupe spécial binational formé en vertu de l'ALÉNA lorsqu'il s'agit d'une décision aux termes de la LMSTI touchant les intérêts des États-Unis ou du Mexique, ou de ces deux pays à la fois. Les gouvernements membres de l'OMC peuvent contester certaines des décisions du Tribunal auprès d'un groupe spécial de règlement des différends formé en vertu du *Mémorandum d'accord concernant les règles et procédures régissant le règlement des différends de l'OMC*.

Membres

Le Tribunal peut compter neuf membres à plein temps, dont un président et deux vice-présidents, nommés par le gouverneur en conseil pour un mandat d'au plus cinq ans, qui peut être renouvelé une fois. Cinq membres supplémentaires, au plus, peuvent être nommés temporairement. Le président est le premier dirigeant et est responsable de l'affectation des membres et de la gestion des affaires internes du Tribunal. Les membres viennent de diverses régions et leurs antécédents scolaires et professionnels sont des plus variés.

Organisation

Les membres du Tribunal, présentement au nombre de sept, peuvent compter sur l'appui d'un effectif de 86 employés. Ses principaux agents sont le secrétaire, responsable de la gestion intégrée, des relations publiques, des échanges avec les autres ministères gouvernementaux et les gouvernements ainsi que des fonctions de greffier du Tribunal; le directeur exécutif de la Recherche, chargé de l'analyse économique et financière des entreprises et des industries ainsi que de la recherche des faits exigée dans le cadre des enquêtes du Tribunal; et l'avocat général, responsable de la prestation de services juridiques.

CHAPITRE II

MANDAT, ORGANISATION ET ACTIVITÉS DU TRIBUNAL

Introduction

Le Tribunal est un tribunal administratif qui fait partie des mécanismes de recours commerciaux du Canada. Il est un organisme quasi judiciaire et indépendant qui assume ses responsabilités législatives de façon impartiale et autonome et relève du Parlement par l'entremise du ministre des Finances.

Les principaux documents législatifs régissant les travaux du Tribunal sont la Loi sur le TCCE, la LMSI, la Loi sur les douanes, la Loi sur la taxe d'accise, le Règlement sur le Tribunal canadien du commerce extérieur (Règlement sur le TCCE), le Règlement sur les enquêtes du Tribunal canadien du commerce extérieur sur les marchés publics et les Règles de procédure.

Mandat

Le mandat principal du Tribunal est le suivant :

- mener des enquêtes afin de déterminer si l'importation de produits qui font l'objet de dumping ou de subventionnement a causé, ou menace de causer, un dommage sensible à une branche de production nationale;
- entendre les appels interjetés à l'égard de décisions rendues par l'ADRC aux termes de la Loi sur les douanes, de la Loi sur la taxe d'accise et de la LMSI;
- enquêter sur des plaintes déposées par des fournisseurs potentiels concernant les marchés publics fédéraux visés par l'ALENA, l'ACI et l'AMP de l'Organisation mondiale du commerce (OMC) et l'Accord sur les marchés d'équipements de télécommunications;
- enquêter sur des demandes présentées par les producteurs canadiens qui souhaitent obtenir des allègements tarifaires sur des intrants textiles importés aux fins de production;
- mener des enquêtes sur les mesures de sauvegarde relativement aux plaintes déposées par des producteurs nationaux qui soutiennent que l'augmentation des importations leur cause, ou menace de leur causer, un dommage grave;
- faire enquête et donner son avis sur des questions économiques, commerciales ou tarifaires dont le gouverneur en conseil ou le ministre des Finances saisit le Tribunal.

Causes du dernier exercice qui ont été reportées	Causes reçues pendant l'exercice	Total	Décisions rendues/ rapports publiés	Causes retraitées/ non entreprises	Causes en suspens (au 31 mars 2001)
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**ACTIVITÉS LIÉES À LA
LMSI**

Enquêtes préliminaires de dommage	-	7	7	5	1
Enquêtes	2	8	10	6	1
Enquêtes d'intérêt public	-	2	2	2	-
Demandes de réexamen intermédiaire	-	2	2	2	-
Expirations ¹	-	3	3	2	1
Réexamens relatifs à l'expiration	4	2	6	4	-

APPELS

Loi sur les douanes	113	30	143	36	28
Loi sur la taxe d'accise	136	27	163	22	52
LMSI	1	3	4	-	2
Total	250	60	310	58	170

**ENQUÊTES SUR LES
QUESTIONS
ÉCONOMIQUES,
COMMERCIALES ET
TARIFAIRES, ET LES
MESURES DE
SAUVEGARDE**

Saisine sur les textiles	5	8	13	8	1
Demandes d'allègement tarifaire	4	-	-	-	-
Expirations ¹	-	-	-	-	-
Réexamens	-	-	-	-	-
Demandes de nouvel examen	-	1	1	1	-
Questions économiques, commerciales et tarifaires	-	-	-	-	-
ACTIVITÉS LIÉES À L'EXAMEN DES MARCHÉS PUBLICS	9	78	87	28	37
Plaintes	22	-	-	-	-

1. Étant donné l'utilisation d'une méthode de notification des expirations, la première colonne fait référence aux expirations pour lesquelles une décision n'avait pas été prise avant la fin de l'exercice précédent. La quatrième colonne fait référence aux décisions de réexamen.

Règles de procédure

Accès aux avis, décisions et publications du Tribunal

Respect des délais législatifs (publication en temps opportun)

Il prévoit aussi que le gouvernement fédéral doit adopter et maintenir des procédures de contestation des offres assujetties à l'accord.

Étant donné que le Tribunal est l'organisme chargé d'examiner les contestations des offres déposées, à l'égard d'un marché public, aux termes de l'Accord de libre-échange nord-américain (ALENA), de l'Accord sur le commerce intérieur (ACI) et de l'Accord sur les marchés publics (AMP), le gouvernement fédéral a décidé que le Tribunal serait chargé de l'examen des contestations des offres déposées aux termes de l'Accord sur les marchés d'équipements de télécommunications. Le Règlement sur les enquêtes du Tribunal canadien du commerce extérieur sur les marchés publics a donc été modifié. Ces modifications sont entrées en vigueur le 1^{er} novembre 2000.

Les Règles du Tribunal canadien du commerce extérieur (Règles de procédure), révisées, sont entrées en vigueur le 15 avril 2000. Elles éliminent les règles inutiles, améliorent l'efficacité et la transparence et rendent les procédures plus justes. Certaines modifications ont été apportées pour tenir compte des progrès de la technologie. En outre, de nouvelles règles ont été introduites à la lumière des modifications législatives à la LMSI et à la Loi sur le TCCÉ entrées en vigueur le 15 avril 2000. Une version non officielle des Règles de procédure est disponible sur le site Web du Tribunal.

Les avis et décisions du Tribunal sont publiés dans la *Gazette du Canada*. Ces documents concernant les plaintes relatives aux marchés publics sont également publiés dans *Marchés publics*.

Le site Web du Tribunal constitue un service d'archives complet des avis, des décisions et des publications du Tribunal, de même que d'autres renseignements relatifs aux activités actuelles du Tribunal. Le Tribunal a aussi lancé un nouveau service d'annonce à l'intention des personnes inscrites sur sa liste de distribution. Ces dernières pourront ainsi être avisées de tout nouvel affichage sur le site Web du Tribunal dans les domaines de compétence du Tribunal qu'elles auront désignées. Le nouveau service permet aussi de s'inscrire, ou d'annuler son inscription, à la liste de distribution, en direct. Ce service est gratuit.

Toutes les enquêtes du Tribunal ont été terminées à temps, et les décisions ont été publiées dans les délais prévus par la loi. En ce qui concerne les appels interjetés à l'égard de décisions en matière de douanes et d'accise pour lesquels aucun délai législatif n'est prévu, le Tribunal publie habituellement, dans les 120 jours suivant l'audience, une décision sur la question en litige, y compris les motifs de sa décision.

observations reçues sur la question d'intérêt public, le Tribunal a décidé d'ouvrir une enquête d'intérêt public aux termes de l'article 45 de la LMSI.

Le 29 août 2000, le Tribunal a transmis son rapport au ministre des Finances, dans lequel il a recommandé que les droits antidumping sur certains opacifiants (iodés en provenance des États-Unis d'Amérique (y compris le Commonwealth de Porto Rico)) soient réduits.

Le 1^{er} août 2000, le Tribunal, aux termes du paragraphe 43(1) de la LMSI, a conclu que le dumping au Canada de certains réfrigérateurs, lave-vaisselle et sècheuses originaires ou exportés des États-Unis d'Amérique (NQ-2000-001) avait causé un dommage sensible à la branche de production nationale. Après avoir examiné les observations reçues sur la question d'intérêt public, le Tribunal a été d'avis qu'il n'existait pas de question d'intérêt public justifiant une enquête plus poussée aux termes de l'article 45 de la LMSI.

Saisine sur les questions commerciales et tarifaires

Textiles

Appels

Examen des marchés publics

Le Tribunal a publié des décisions concernant 58 appels interjetés à l'égard de décisions rendues par le ministère du Revenu national et par l'ADRC aux termes de la *Loi sur les douanes* et de la *Loi sur la taxe d'accise*.

Le Tribunal a reçu 78 plaintes au cours de l'exercice. Le Tribunal a publié 28 décisions écrites afférentes à ses conclusions et à ses recommandations. Neuf d'entre elles concernaient des causes qui étaient en cours à la fin de l'exercice 1999-2000. Dans 13 des 28 décisions écrites, il a été déterminé que les plaintes étaient fondées ou fondées en partie.

En juillet 1999, les gouvernements de la République de Corée et du Canada ont signé l'*Accord sur les marchés d'équipements de télécommunications* qui établit les règles et procédures concernant les marchés publics portant sur les équipements de télécommunications et les services accessoires fournis par des fabricants et des fournisseurs de services des deux pays. L'accord prévoit aussi l'application de règles non discriminatoires pour ce qui concerne l'achat des équipements de télécommunications visés par les institutions fédérales désignées.

Le 26 janvier 2001, M. Gerry Stobo a démissionné du poste d'«avocat général du Tribunal afin de poursuivre sa carrière dans le secteur privé. Le Tribunal tient à souligner l'importante contribution de M. Stobo au travail du Tribunal et à la collectivité quasi judiciaire. Il a participé, de concert avec le Centre canadien de gestion, à l'élaboration d'un programme de formation à l'intention des nouveaux membres des conseils et des tribunaux du gouvernement fédéral. Il a également oeuvré de façon significative dans le domaine de la déontologie et des valeurs dans un contexte quasi judiciaire. Enfin, M. Stobo a joué un rôle actif au sein de l'Association du Barreau canadien et a été élu premier président de la Conférence des avocat(e)s du gouvernement et du secteur public, qui vise à promouvoir une tribune à l'intention des avocats du secteur public dont les intérêts ne sont pas les mêmes que ceux des avocats du secteur privé.

Des modifications législatives à la *Loi sur les mesures spéciales d'importation* (LMSI) et à la *Loi sur le Tribunal canadien du commerce extérieur* (Loi sur le TCCBE) sont entrées en vigueur le 15 avril 2000. Ces modifications ont apporté des changements à la compétence, à la procédure et au processus du Tribunal.

Afin que les parties intéressées puissent se familiariser avec ces changements, le Tribunal a publié une série de lignes directrices intermédiaires concernant les enquêtes préliminaires de dommage, les enquêtes d'intérêt public, les réexamens intermédiaires et les réexamens relatifs à l'expiration. Ces documents sont disponibles sur le site Web du Tribunal (www.itc.gc.ca).

Au cours de l'exercice, le Tribunal a rendu cinq décisions provisoires de dommage aux termes du paragraphe 37.1(1) de la LMSI. Une enquête préliminaire de dommage a été close et une autre était en cours à la fin de l'exercice. Le Tribunal a également rendu six conclusions à la suite d'enquêtes de dommage aux termes de l'article 42 de la LMSI et quatre ordonnances à la suite de réexamens aux termes de l'article 76 de cette même loi. Une enquête de dommage a été suspendue à la suite de l'acceptation par le commissaire de l'Agence des douanes et du revenu du Canada (ADRC) d'un acte d'engagement de la part de l'exportateur des marchandises visées. À la fin de l'exercice, trois enquêtes et deux réexamens étaient en cours.

Le 1^{er} mai 2000, le Tribunal, aux termes du paragraphe 43(1) de la LMSI, a conclu que le dumping au Canada de certains opacifiants iodés utilisés pour l'imagerie radiographique, originaires ou exportés des États-Unis d'Amérique (y compris le Commonwealth de Porto Rico) (NQ-99-003) avait causé un dommage sensible à la branche de production nationale. Après avoir examiné les

Cadres supérieurs

Modifications
législatives à la

Loi sur les

mesures

spéciales

d'importation et à

la Loi sur le

Tribunal canadien

du commerce

extérieur

Enquêtes et
réexamens en
matière de
dumping et de
subventionnement

Enquêtes d'intérêt
public

CHAPITRE I

FAITS SAILLANTS DU TRIBUNAL AU COURS DE L'EXERCICE

Membres

Le 1^{er} janvier 2001, M^{me} Patricia M. Close a été renommée au poste de vice-présidente du Tribunal canadien du commerce extérieur (le Tribunal). Avant sa nomination au Tribunal en 1997, M^{me} Close était directrice de la Division des tarifs au ministère des Finances. Elle a occupé divers postes supérieurs aux ministères de l'Industrie, des Ressources naturelles et des Finances ainsi qu'à la Banque de Montréal et à Pétro-Canada dans le cadre du Programme de permutation des cadres.

Le 19 septembre 2000, M. Richard Lafontaine a été nommé vice-président du Tribunal. M. Lafontaine avait initialement été nommé au poste de membre du Tribunal en 1998. Avant cette nomination, M. Lafontaine était président du Conseil canadien des normes. Il a également occupé divers postes dans les sociétés Les Services professionnels Warnock Hersey Ltée, ainsi que Lavallin et son successeur, SNC-Lavallin, et Inchcape Testing Services.

Le 10 novembre 2000, M. Peter F. Thalheimer a été renommé au poste de membre du Tribunal. Avant sa nomination au Tribunal en 1997, M. Thalheimer avait pratiqué le droit privé, à son cabinet juridique de Timmins (Ontario) de 1964 à 1993, puis été élu à la Chambre des communes en 1993 comme représentant du comité de Timmins-Chapleau et occupé le poste de vice-président du Comité permanent sur les ressources naturelles.

Le 19 février 2001, M^{me} Ellen Fry a été nommée au poste de membre du Tribunal. Avant sa nomination, M^{me} Fry était avocate générale du Secrétaire des Services axés sur le client du ministère de la Justice. Elle avait auparavant occupé le poste d'avocate générale au ministère de l'Industrie et au ministère des Transports et, subséquemment, au ministère de l'Environnement où elle dirigeait le travail judiciaire touchant des questions de nature commerciale. M^{me} Fry a également pratiqué le droit dans le secteur privé.

Au cours de l'exercice, M. Raynald Guay a démissionné du poste de vice-président du Tribunal et le mandat de M. Arthur B. Trudeau, comme membre vacataire du Tribunal, s'est terminé. Le Tribunal aimerait reconnaître leur inestimable contribution aux travaux du Tribunal.

70	Canada entre le 1 ^{er} avril 2000 et le 31 mars 2001
66	Causes concernant les marchés publics devant la Cour fédérale du
	Règlement des plaintes concernant les marchés publics entre le
	1 ^{er} avril 2000 et le 31 mars 2001
57	Recommandations d'allègement tarifaire en vigueur
56	Règlement d'une demande de nouvel examen entre le 1 ^{er} avril 2000 et le
55	31 mars 2001
	Règlement des demandes d'allègement tarifaire entre le 1 ^{er} avril 2000 et
	le 31 mars 2001

Chapitre VI

Chapitre V

LISTE DES TABLEAUX

5	Chapitre I	Charge de travail du Tribunal au cours de l'exercice
8	Chapitre II	Organisation
11		Mandat législatif du Tribunal
	Chapitre III	Décisions provisoires de dommage rendues aux termes du paragraphe 37.1(1) de la LMSI entre le 1 ^{er} avril 2000 et le 31 mars 2001 et enquêtes préliminaires de dommage menées aux termes du paragraphe 34(2) de la LMSI en cours à la fin de l'exercice
30		Conclusions rendues aux termes de l'article 43 de la LMSI entre le 1 ^{er} avril 2000 et le 31 mars 2001 et enquêtes menées aux termes de l'article 42 de la LMSI en cours à la fin de l'exercice
31		Ordonnances rendues aux termes de l'article 76 de la LMSI entre le 1 ^{er} avril 2000 et le 31 mars 2001 et réexamens en cours à la fin de l'exercice
32		Conclusions et ordonnances aux termes de la LMSI en vigueur au 31 mars 2001
33		Causes aux termes de la LMSI devant la Cour fédérale du Canada ou un groupe spécial binationnel entre le 1 ^{er} avril 2000 et le 31 mars 2001
36		Décisions d'appels rendues aux termes de l'article 67 de la <i>Loi sur les douanes</i> et de l'article 81.19 de la <i>Loi sur la taxe d'accise</i> entre le 1 ^{er} avril 2000 et le 31 mars 2001
45		Décisions du Tribunal portées en appel devant la Cour fédérale du Canada entre le 1 ^{er} avril 2000 et le 31 mars 2001 et en instance au 31 mars 2001
47		Décisions d'appels rendues par la Cour fédérale du Canada entre le 1 ^{er} avril 2000 et le 31 mars 2001
48		

TABLE DES MATIÈRES

Chapitre I	Faits saillants du Tribunal au cours de l'exercice	1
Chapitre II	Mandat, organisation et activités du Tribunal	7
Chapitre III	Enquêtes de dommage et réexamens en matière de dumping et de subventionnement	13
Chapitre IV	Appels	37
Chapitre V	Enquêtes sur les questions économiques, commerciales et tarifaires, et les mesures de sauvegarde	49
Chapitre VI	Examen des marchés publics	61
Chapitre VII	Vers le dossier administratif électronique - expérience du Tribunal	71
	Publications du Tribunal rendues pendant l'exercice	79



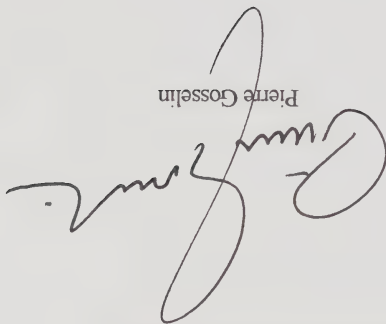
Le 17 mai 2001

L'honorable Paul M. Martin, c.p., député
Ministre des Finances
Chambre des communes
Ottawa (Ontario)
K1A 0A6

Monsieur le Ministre,

J'ai l'honneur de vous transmettre, pour dépôt à la Chambre des communes, conformément à l'article 41 de la *Loi sur le Tribunal canadien du commerce extérieur*, le rapport annuel du Tribunal canadien du commerce extérieur pour l'exercice se terminant le 31 mars 2001.

Je vous prie d'agréer, Monsieur le Ministre, l'expression de ma considération distinguée.


Pierre Gosselin

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POUR L'EXERCICE SE TERMINANT
LE 31 MARS 2001

RAPPORT ANNUEL

Tribunal canadien
du commerce
extérieur

mai 2001

POUR L'EXERCICE SE TERMINANT
LE 31 MARS 2001



TRIBUNAL CANADIEN
DU COMMERCE
EXTÉRIEUR

2000-2001

RAPPORT ANNUEL



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Trade Tribunal

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CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Annual Report

2001-2002

Canada

ANNUAL REPORT

**FOR THE FISCAL YEAR ENDING
MARCH 31, 2002**

**Canadian
International
Trade Tribunal**



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CHAIRMAN

PRÉSIDENT

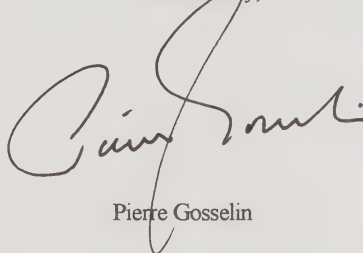
June 26, 2002

The Honourable John Manley, P.C., M.P.
Deputy Prime Minister and Minister of Finance
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

I have the honour of transmitting to you, for tabling in the House of Commons, pursuant to section 41 of the *Canadian International Trade Tribunal Act*, the Annual Report of the Canadian International Trade Tribunal for the fiscal year ending March 31, 2002.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Pierre Gosselin".

Pierre Gosselin

TABLE OF CONTENTS

Chapter I	Tribunal Highlights in Fiscal Year	1
Chapter II	Mandate, Organization and Activities of the Tribunal	7
Chapter III	Dumping and Subsidizing Injury Inquiries and Reviews	13
Chapter IV	Appeals	33
Chapter V	Economic, Trade and Tariff References and Safeguard Inquiries	45
Chapter VI	Procurement Review	59
	Tribunal Publications Issued During the Fiscal Year	71

LIST OF TABLES

Chapter I	Tribunal's Caseload in Fiscal Year	5
Chapter II	Organization	10
	Legislative Mandate of the Tribunal	11
Chapter III	Preliminary Determinations of Injury Issued Under Subsection 37.1(1) of SIMA Between April 1, 2001, and March 31, 2002	26
	Findings Issued Under Section 43 of SIMA Between April 1, 2001, and March 31, 2002, and Inquiries Under Section 42 of SIMA in Progress at Year End	27
	Orders Issued Under Section 76.03 of SIMA Between April 1, 2001, and March 31, 2002, and Reviews in Progress at Year End	28
	SIMA Findings and Orders in Force as of March 31, 2002	29
	SIMA Cases Before the Federal Court of Canada or a Binational Panel Between April 1, 2001, and March 31, 2002	32
Chapter IV	Decisions on Appeals	36
	Appeal Decisions Rendered Under Section 67 of the <i>Customs Act</i> , Section 81.19 of the <i>Excise Tax Act</i> and Section 61 of SIMA Between April 1, 2001, and March 31, 2002	41
	Tribunal Decisions Appealed to the Federal Court of Canada Between April 1, 2001, and March 31, 2002, and Pending as of March 31, 2002	43
	Appeal Decisions of the Federal Court of Canada Rendered Between April 1, 2001, and March 31, 2002	44
Chapter V	Disposition of Requests for Tariff Relief Between April 1, 2001, and March 31, 2002	52
	Tariff Relief Recommendations in Place	53

Chapter VI

Summary of Procurement Review Activities	60
Disposition of Procurement Complaints Between April 1, 2001, and March 31, 2002	64
Procurement Cases Before the Federal Court of Canada Between April 1, 2001, and March 31, 2002	69

CHAPTER I

TRIBUNAL HIGHLIGHTS IN FISCAL YEAR

Dumping and Subsidizing Inquiries and Reviews

In the fiscal year, the Canadian International Trade Tribunal (the Tribunal) issued four preliminary determinations of injury under subsection 37.1(1) of the *Special Import Measures Act* (SIMA). The Tribunal also issued six findings following injury inquiries under section 42 of SIMA and three orders following reviews under section 76.03. At the end of the year, there were two inquiries and three expiry reviews in progress.

Public Interest Investigations

Pursuant to section 45 of SIMA, a public interest inquiry may be conducted by the Tribunal following a finding of injury caused by dumped or subsidized imports. The Tribunal may decide, either as a result of a request from an interested person or on its own initiative, that there are reasonable grounds to consider that the imposition of part or all of those duties may not be in the public interest. In fiscal year 2001-2002, no public interest inquiries were conducted by the Tribunal further to findings of injury in three inquiries.

Procurement Review

The Tribunal received 77 complaints during the fiscal year. The Tribunal issued 32 written determinations of its findings and recommendations. Twenty-one of these determinations related to cases that were in progress at the end of fiscal year 2000-2001.

In July 1999, the governments of the Republic of Korea (Korea) and Canada signed the *Agreement on the Procurement of Telecommunications Equipment* establishing rules and procedures with respect to government procurement of telecommunications equipment and incidental services by manufacturers and service providers of both countries. The agreement also provides for the application of non-discriminatory rules with respect to the procurement of telecommunications equipment by listed government entities. Under the terms of the agreement, the federal government is required to adopt and maintain bid protest procedures for procurement that it covers. The Tribunal has been designated as the bid challenge authority under the agreement. The *Canadian International Trade Tribunal Procurement Inquiry Regulations* were therefore amended. The agreement was ratified and is in force as of September 1, 2001.

In September 2001, the Tribunal made available on its Web site an electronic package entitled "Filing a Procurement Complaint". This package provides

Trade and Tariff Reference

potential complainants with an overview of the Tribunal's jurisdiction and process and allows them to file their complaints on-line.

Textiles

During the fiscal year, the Tribunal issued three reports to the Minister of Finance concerning four requests for tariff relief. Two requests for tariff relief were in progress at the end of the year. In addition, the Tribunal's seventh annual status report on the investigation process was submitted to the Minister of Finance on February 25, 2002.

Safeguard Inquiry

On March 21, 2002, the Tribunal was directed by Her Excellency the Governor General in Council, on the recommendation of the Minister of Finance and the Minister for International Trade, pursuant to paragraph 20(a) of the *Canadian International Trade Tribunal Act* (CITT Act), to inquire into and report on the importation of certain steel goods.

As directed by Her Excellency, the Tribunal will submit a notice of any determination on July 4, 2002, and its report on any determination and any recommendation on August 19, 2002.

Appeals

The Tribunal issued decisions on 59 appeals from decisions of the Department of National Revenue and the Canada Customs and Revenue Agency (CCRA) made under the *Customs Act*, the *Excise Tax Act* and SIMA.

Legislative Amendments Affecting the Tribunal's Jurisdiction

The Protocol on the Accession of the People's Republic of China to the World Trade Organization (WTO) came into effect on December 11, 2001.

Bill C-50, which has been through second reading, amends the CITT Act, the *Customs Tariff* and the *Export and Import Permits Act* to authorize the Governor in Council to impose, under certain conditions and after an inquiry by the Tribunal, special trade measures to protect Canadian industries from injury that could be caused by imports from the People's Republic of China (China). The Tribunal could be required to conduct an inquiry where there had been either a market disruption (i.e. a rapid increase in imports of Chinese goods that are like or directly competitive with Canadian goods) or an action (by another WTO Member) causing or threatening to cause a significant diversion of trade into Canada. These special trade measures, called safeguards, will be available until December 11, 2013.

Bill C-50 also amends SIMA to allow the CCRA greater flexibility in conducting anti-dumping investigations relating to imported Chinese goods when the price or cost of production of those goods in China is not determined by market economy conditions.

On February 7, 2002, the *Regulations Amending the Special Import Measures Regulations* on massive importation of dumped or subsidized goods came into effect. On February 23, 2002, they were published in the *Canada Gazette*, Part II. They provide guidance in respect of inquiries conducted by the Tribunal under paragraphs 42(1)(b) and (c) of SIMA. The amendments will ensure greater transparency and predictability by setting out factors to be considered in determining whether injury has been caused by a massive importation of dumped or subsidized goods, or by a series of importations of such goods where the importations have occurred within a relatively short period of time and, in the aggregate, are massive.

On November 29, 2001, legislative amendments to the *Customs Act* came into force. Sections 60.2 and 67.1 of the *Customs Act* provide that a person may apply to the Tribunal for an extension of time. (Refer to Chapter IV for additional information.)

Supreme Court of Canada's Decision on the Standard of Review of the Tribunal's Decisions

On June 7, 2001, the Supreme Court of Canada handed down a decision that dealt with the standard of review applicable to the Tribunal's decisions with respect to the value for duty of imported goods under the *Customs Act*. In *Canada (Deputy Minister of National Revenue) v. Mattel Canada*, [2001] 2 S.C.R. 100, the Supreme Court of Canada decided that the appropriate standard of review applicable to the Tribunal's decisions in such cases is correctness with respect to questions of law. (Refer to Chapter IV for additional information on this court decision.)

Access to Tribunal Notices, Decisions and Publications

Tribunal notices and decisions are published in the *Canada Gazette*. Those relating to procurement complaints are also published on MERX (Canada's Electronic Tendering Service).

The Tribunal's Web site provides an exhaustive repository of all Tribunal notices, decisions and publications, as well as other information relating to the Tribunal's current activities. The Tribunal also launched a new subscriber alert service. This new service gives a subscriber the flexibility to choose those areas of the Tribunal's jurisdiction for which it wants to be notified of each new posting on the Tribunal's Web site. It also allows subscribers to register and deregister on-line. This service is available free of charge.

**Meeting Statutory
Deadlines
(Timeliness)**

All the Tribunal's inquiries were completed on time, and decisions were issued within the statutory deadlines. For appeals of customs and excise decisions that are not subject to statutory deadlines, the Tribunal usually issues, within 120 days of the hearing, a decision on the matter in dispute, including the reasons for its decision.

Tribunal's Caseload in Fiscal Year

	Cases Brought Forward from Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions/ Reports Issued	Cases Withdrawn/ Not Initiated/ Terminated/ Suspended	Cases Outstanding (March 31, 2002)
SIMA ACTIVITIES						
Preliminary Injury Inquiries	1	3	4	4	-	-
Inquiries	3	4	7	6	-	1
Public Interest Inquiries	-	-	-	-	-	-
Requests for Interim Review	-	2	2	-	1	1
Expiries	-	2	2	2	-	-
Expiry Reviews	2	6	8	3	-	5
APPEALS						
<i>Customs Act</i>	79	56	135	46	31	58
<i>Excise Tax Act</i>	89	37	126	12	18	96
SIMA	2	5	7	1	-	6
Total	170	98	268	59	49	160
ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES						
Textile Reference	-	-	-	-	-	-
Requests for Tariff Relief	4	2	6	3 ¹	-	2
Expiries	-	-	-	-	-	-
Reviews	-	-	-	-	-	-
Requests for Reconsideration	-	-	-	-	-	-
Economic, Trade and Tariff-related Matters	-	-	-	-	-	-
Safeguard Inquiries	-	1	1	-	-	1
PROCUREMENT REVIEW ACTIVITIES						
Complaints	22	77	99	32	50	17

1. During the fiscal year, the Tribunal issued three reports to the Minister of Finance concerning four requests for tariff relief.

CHAPTER II

MANDATE, ORGANIZATION AND ACTIVITIES OF THE TRIBUNAL

Introduction

The Tribunal is an administrative tribunal operating within Canada's trade remedies system. It is an independent quasi-judicial body that carries out its statutory responsibilities in an autonomous and impartial manner and reports to Parliament through the Minister of Finance.

The main legislation governing the work of the Tribunal is the CITT Act, SIMA, the *Customs Act*, the *Excise Tax Act*, the *Canadian International Trade Tribunal Regulations* (CITT Regulations), the *Canadian International Trade Tribunal Procurement Inquiry Regulations* and the *Canadian International Trade Tribunal Rules* (Rules of Procedure).

Mandate

The Tribunal's primary mandate is to:

- conduct inquiries into whether dumped or subsidized imports have caused, or are threatening to cause, material injury to a domestic industry;
- hear appeals of decisions of the CCRA made under the *Customs Act*, the *Excise Tax Act* and SIMA;
- conduct inquiries into complaints by potential suppliers concerning federal government procurement that is covered by the *North American Free Trade Agreement* (NAFTA), the *Agreement on Internal Trade* (AIT), the *WTO Agreement on Government Procurement* (AGP) and the *Agreement on the Procurement of Telecommunications Equipment*;
- conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in production operations;
- conduct safeguard inquiries into complaints by domestic producers that increased imports are causing, or threatening to cause, serious injury to domestic producers; and
- conduct inquiries and provide advice on such economic, trade and tariff issues as are referred to the Tribunal by the Governor in Council or the Minister of Finance.

Method of Operation

In carrying out most of its responsibilities, the Tribunal conducts inquiries with hearings that are open to the public. These are normally held at the Tribunal's offices in Ottawa, Ontario, although hearings may also be held elsewhere in Canada, in person or through videoconferencing. The Tribunal has rules and procedures similar to those of a court of law, but not quite as formal or strict. The CITT Act states that hearings, generally conducted by a panel of three members, should be carried out as "informally and expeditiously" as the circumstances and considerations of fairness permit. The Tribunal has the power to subpoena witnesses and require parties to submit information. The CITT Act contains provisions for the protection of confidential information. Only independent counsel who have filed declarations and confidentiality undertakings may have access to confidential information.

The Tribunal's decisions may be reviewed by or appealed to, as appropriate, the Federal Court of Canada and, ultimately, the Supreme Court of Canada, or a binational panel under NAFTA, in the case of a decision affecting U.S. and/or Mexican interests in SIMA. Governments that are members of the WTO may challenge some of the Tribunal's decisions before a dispute settlement panel under the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes*.

Membership

The Tribunal may be composed of nine full-time members, including a Chairperson and two Vice-Chairpersons, who are appointed by the Governor in Council for a term of up to five years that is renewable once. A maximum of five additional members may be temporarily appointed. The Chairperson is the Chief Executive Officer responsible for the assignment of members and for the management of the Tribunal's work. Members come from a variety of educational backgrounds, careers and regions of the country.

Organization

Members of the Tribunal, currently 7, are supported by a permanent staff of 86 people. Its principal officers are the Secretary, responsible for corporate management, public relations, dealings with other government departments and other governments, and the court registry functions of the Tribunal; the Executive Director, Research, responsible for the investigative portion of inquiries, for the economic and financial analysis of firms and industries and for other fact finding required for Tribunal inquiries; and the General Counsel, responsible for the provision of legal services.

Consultations

Through the Tribunal/Canadian Bar Association Bench and Bar Committee, the Tribunal provides a forum to promote discussion with the bar on issues of importance. The committee also includes representatives from the trade

consulting community. The Tribunal consults with bar associations, representatives of industries and others that appear or are likely to appear before the Tribunal to exchange views on new procedures being considered by the Tribunal prior to their distribution as guidelines or practice notices. The Tribunal also briefs federal government departments and trade associations on its procedures.

Organization

CHAIRPERSON

Pierre Gosselin

VICE-CHAIRPERSONS

Patricia M. Close
Richard Lafontaine

MEMBERS

Peter F. Thalheimer
Zdenek Kvarda
James A. Ogilvy
Ellen Fry

SECRETARIAT

Secretary
Michel P. Granger

RESEARCH BRANCH

Executive Director of Research
Ronald W. Erdmann

LEGAL SERVICES BRANCH

General Counsel
Reagan Walker

Legislative Mandate of the Tribunal

Section	Authority
CITT Act	
18	Inquiries on Economic, Trade or Commercial Interests of Canada by Reference from the Governor in Council
19	Inquiries Into Tariff-related Matters by Reference from the Minister of Finance
19.01	Safeguard Inquiries Concerning Goods Imported from the United States and Mexico
19.02	Mid-term Reviews of Safeguard Measures and Report
20	Safeguard Inquiries Concerning Goods Imported Into Canada and Inquiries Into the Provision, by Persons Normally Resident Outside Canada, of Services in Canada
23	Safeguard Complaints by Domestic Producers
23(1.01) and (1.02)	Safeguard Complaints by Domestic Producers Concerning Goods Imported from the United States and Mexico
30.08 and 30.09	Safeguard Measures
30.11	Complaints by Potential Suppliers in Respect of Designated Contracts
SIMA	
33 and 37	Advice to the Commissioner
34(2) and 35(3)	Preliminary Inquiry
37.1	Preliminary Determination of Injury
42	Inquiries With Respect to Injury Caused by the Dumping and Subsidizing of Goods
43	Findings of the Tribunal Concerning Injury
44	Recommendation of Inquiry (on Remand from the Federal Court of Canada or a Binational Panel)
45	Public Interest
46	Advice to the Commissioner
61	Appeals of Redeterminations of the Commissioner Made Pursuant to Section 59 Concerning Whether Imported Goods Are Goods of the Same Description as Goods to Which a Tribunal Finding Applies, Normal Values and Export Prices or Subsidies
76	Reviews of Findings of Injury Initiated by the Tribunal or at the Request of the Commissioner or Other Interested Persons

Legislative Mandate of the Tribunal (cont'd)

Section	Authority
76.01	Interim Reviews of Orders by the Tribunal
76.02	Reviews of Orders by the Tribunal on Referral Back and Re-hearing
76.03	Expiry Reviews
76.1	Reviews of Findings of Injury Initiated at the Request of the Minister of Finance
89	Rulings on Who Is the Importer

Customs Act

67	Appeals of Decisions of the Commissioner Concerning Value for Duty and Origin and Classification of Imported Goods
67.1	Requests for Time Extension to File Notices of Appeal
68	Appeals to the Federal Court of Canada
70	References of the Commissioner Relating to the Tariff Classification or Value for Duty of Goods

Excise Tax Act

81.19, 81.21, 81.22, 81.23, 81.25 and 81.33	Appeals of Assessments and Determinations of the Minister of National Revenue
81.32	Requests for Extension of Time for Objection or Appeal

Softwood Lumber Products Export Charge Act

18	Appeals of Assessments and Determinations of the Minister of National Revenue
----	---

Energy Administration Act

13	Declarations Concerning the Amount of Oil Export Charge
----	---

CHAPTER III

DUMPING AND SUBSIDIZING INJURY INQUIRIES AND REVIEWS

The Process

Under SIMA, the CCRA may impose anti-dumping and countervailing duties if domestic producers are injured by imports of goods into Canada:

- at prices lower than sales in the home market or lower than the cost of production (dumping), or
- that have benefited from certain types of government grants or other assistance (subsidizing).

The determination of dumping and subsidizing is the responsibility of the CCRA. The Tribunal determines whether such dumping or subsidizing has caused “material injury” or “retardation” or is threatening to cause material injury to a domestic industry.

Preliminary Injury Inquiries

A Canadian producer or an association of Canadian producers begins the process of seeking relief from alleged injurious dumping or subsidizing by making a complaint to the Commissioner of the CCRA. If the Commissioner initiates a dumping or subsidizing investigation, the Tribunal initiates a preliminary injury inquiry under subsection 34(2) of SIMA. The Tribunal seeks to make all interested parties aware of the inquiry. It issues a notice of commencement of preliminary injury inquiry that is published in the *Canada Gazette* and forwarded to all known interested persons.

In the inquiry, the Tribunal determines whether the evidence discloses a “reasonable indication” that the dumping or subsidizing has caused injury or retardation, or is threatening to cause injury. The primary evidence is the information received from the Commissioner and submissions from parties. The Tribunal seeks the views of parties on what are the like goods and which domestic producers comprise the domestic industry. In most cases, the Tribunal does not issue questionnaires or hold a public hearing. The Tribunal makes a preliminary determination after an inquiry of up to 60 days.

If the Tribunal finds that there is a reasonable indication that the dumping or subsidizing has caused injury or retardation, or is threatening to cause injury, it makes a determination to that effect, and the Commissioner continues the dumping or subsidizing investigation. If there is no reasonable indication that the

**Preliminary Injury
Inquiries
Completed in the
Fiscal Year**

dumping or subsidizing has caused injury or retardation, or is threatening to cause injury, the Tribunal terminates the inquiry, and the Commissioner terminates the dumping or subsidizing investigation. The Tribunal issues reasons 15 days after its determination.

The Tribunal completed four preliminary injury inquiries in the fiscal year.

Table 1 summarizes the Tribunal's preliminary injury inquiry activities during the fiscal year.

**Advice Given
Under Section 37
of SIMA**

When the Commissioner decides not to cause an investigation to be initiated by reason that the evidence does not disclose a reasonable indication that the dumping or subsidizing of the goods has caused injury or retardation or threat of injury, the Commissioner or the complainant may, under section 33 of SIMA, refer the matter to the Tribunal for an opinion as to whether or not the evidence before the Commissioner discloses a reasonable indication that the dumping or subsidizing has caused material injury or retardation or is threatening to cause material injury to a domestic industry.

Section 37 of SIMA requires the Tribunal to render its advice within 30 days. The Tribunal makes its decision, without holding a public hearing, on the basis of the information before the Commissioner when the decision regarding initiation was reached.

There were no references under section 33 of SIMA during the fiscal year.

**Final Injury
Inquiries**

If the Commissioner makes a preliminary determination of dumping or subsidizing, the Tribunal commences a final injury inquiry under section 42 of SIMA. The CCRA may levy provisional duties on imports from the date of the preliminary determination. The Commissioner continues his investigation to a final determination of dumping or subsidizing.

As in a preliminary injury inquiry, the Tribunal seeks to make all interested parties aware of its inquiry. It issues a notice of commencement of inquiry that is published in the *Canada Gazette* and forwarded to all known interested parties.

In conducting final injury inquiries, the Tribunal requests information from interested parties, receives representations and holds public hearings. The Tribunal's staff carries out extensive research for each inquiry. The Tribunal sends questionnaires to domestic producers, importers and purchasers and to foreign producers. Based primarily on questionnaire responses, the Tribunal's

**Final Injury
Inquiries
Completed in the
Fiscal Year**

staff prepares a report that focuses on the factors that the Tribunal considers in arriving at decisions regarding material injury or retardation or threat of material injury to a domestic industry. The reports become part of the case record and are made available to counsel and parties.

Parties participating in the proceedings may conduct their own cases or be represented by counsel. Confidential or business-sensitive information is protected in accordance with provisions of the CITT Act.

The *Special Import Measures Regulations* prescribe factors that the Tribunal may consider in its determination of whether the dumping or subsidizing of goods has caused material injury or retardation or is threatening to cause material injury to a domestic industry. These factors include, among others, the volume of dumped or subsidized goods, the effects of the dumped or subsidized goods on prices and the impact of the dumped or subsidized goods on production, sales, market shares, profits, employment and utilization of production capacity.

The Tribunal holds a public hearing about 90 days after the commencement of the inquiry, usually starting just before the Commissioner makes a final determination of dumping or subsidizing. At the public hearing, domestic producers attempt to persuade the Tribunal that the dumping or subsidizing of goods has caused material injury or retardation or is threatening to cause material injury to a domestic industry. Importers and exporters challenge the domestic producers' case. After cross-examination by parties and questioning by the Tribunal, each side has an opportunity to respond to the other's case and to summarize its own. In many inquiries, the Tribunal calls witnesses who are knowledgeable about the industry and market in question. Parties may also seek exclusions from a Tribunal finding of material injury or retardation or threat of material injury to a domestic industry.

The Tribunal must issue its finding within 120 days from the date of the preliminary determination by the Commissioner. The Tribunal has an additional 15 days to issue a statement of reasons explaining its finding. A Tribunal finding of material injury or retardation or threat of material injury to a domestic industry is the legal authority for the imposition of anti-dumping or countervailing duties by the CCRA.

The Tribunal completed six final injury inquiries in the fiscal year. They concerned *Garlic, Fresh or Frozen* (NQ-2000-006), *Certain Concrete Reinforcing Bar* (NQ-2000-007), *Certain Corrosion-resistant Steel Sheet* (NQ-2000-008), *Certain Flat Hot-rolled Steel Sheet and Strip* (NQ-2001-001), *Certain Cold-rolled Steel Sheet* (NQ-2001-002), and *Leather Footwear with Metal Toe Caps* (NQ-2001-003). In 2000, the estimated values of the Canadian

	<p>markets for these goods were \$20 million for garlic, \$350 million for reinforcing bar, \$930 million for corrosion-resistant sheet, \$3.3 billion for hot-rolled steel sheet, \$830 million for cold-rolled steel sheet and \$175 million for footwear.</p>
<p>Garlic, Fresh or Frozen</p> <p><i>NQ-2000-006</i></p> <p><i>Finding: Injury (May 2, 2001)</i></p>	<p>This inquiry involved the dumping in Canada of fresh and frozen garlic from China and Vietnam, excluding fresh garlic subject to the Tribunal's finding in NQ-96-002 (i.e. garlic imported from China from July 1 to December 31 inclusive, of each calendar year). The domestic industry consisted of 96 Ontario growers represented by the Garlic Growers Association of Ontario. They accounted for over two thirds of Canada's total production of garlic. The Tribunal found that fresh and frozen garlic constituted a single class of goods.</p> <p>The Tribunal found that the substantial volumes and very low prices of dumped garlic from China and Vietnam had caused material injury to the domestic growers in the form of price erosion, reduced profitability and reduced plantings. The dumped subject goods forced the market prices down to below the domestic growers' costs of production. In the Tribunal's view, this resulted in a financial loss of about \$1 million, most of which was related to the price erosion.</p> <p>The Tribunal also considered other factors that could have had an impact on the industry, including the weather, other low-priced imports, the competitiveness of the domestic growers and the domestic overproduction in 2000. It found that none of these factors contributed in any significant way to the injury experienced by the domestic industry.</p>
<p>Certain Concrete Reinforcing Bar</p> <p><i>NQ-2000-007</i></p> <p><i>Finding: Injury (June 1, 2001)</i></p>	<p>This inquiry concerned dumped imports of concrete reinforcing bar (rebar) from Indonesia, Japan, Latvia, Republic of Moldova, Poland, Chinese Taipei and Ukraine. Eight firms accounted for Canada's production of rebar. They are Stelco Inc. (Stelco), its two wholly owned subsidiaries AltaSteel Ltd. and Stelco McMaster Ltée, Co-Steel Inc., Gerdau Courtice Steel Inc., Gerdau MRM Steel Inc., Ispat Sidbec Inc. (Ispat) and Slater Steel Inc.</p> <p>This was the Tribunal's second inquiry into dumped imports of rebar. In Inquiry No. NQ-99-002, the Tribunal found that dumped imports from Cuba, Korea and Turkey had caused injury to the domestic industry and that importers had switched sources of supply to the countries named in this inquiry.</p> <p>In this inquiry, the Tribunal found that, as the volume of subject imports grew, price levels collapsed around the third quarter of 2000. Witnesses testified that imports from the subject countries were the undisputed price leaders in the domestic market. Since rebar is the largest cost component in contract bids and small differences in its cost can often determine the outcome of contract bids,</p>

fabricators were forced to purchase dumped imports in order to remain competitive. During the inquiry period, the domestic industry's gross margins and net income deteriorated sharply.

The Tribunal concluded that the substantial volumes and low prices of dumped rebar from the named countries caused injury to the domestic industry in the form of lost sales, declining market share and price erosion. Furthermore, these lost sales and price erosion accounted for a significant proportion of the decline in financial performance experienced by the domestic industry in 2000.

The Tribunal examined factors other than dumping that may have caused the injury suffered by the domestic producers. They included stoppages in production, trends in the price of steel scrap, and the volume and prices of imports from non-subject countries. The Tribunal determined that none of these satisfactorily explained the injury suffered by the domestic industry.

Certain Corrosion-resistant Steel Sheet

NQ-2000-008

*Finding:
No Injury/No Threat of
Injury
(July 3, 2001)*

This inquiry concerned dumped imports of corrosion-resistant steel sheet from China, India, Malaysia, Russia, South Africa and Chinese Taipei, and subsidized imports from India. The domestic industry consisted of Dofasco Inc. (Dofasco), Sorevco, Stelco and Continuous Colour Coat Limited.

The Tribunal was not convinced that the surge of dumped and subsidized imports from the subject countries in the last half of 1999 and the first half of 2000 caused injury to the domestic industry. It found that the increase in import sales in 1999 and 2000 was to meet the surging demand of both the automotive and construction markets, as the domestic industry was essentially at full capacity and inventories were at normal levels. A dramatic decline in prices for corrosion-resistant steel, as the domestic market for automotive product weakened in 2000, resulted in sharp decreases in the industry's gross margins and net incomes. In the Tribunal's view, factors other than the dumped and subsidized goods caused the injury experienced by the domestic industry. While average industry prices declined significantly in the latter part of 2000, selling prices of the subject imports actually increased over the same period and the volumes of imports declined.

The Tribunal attributed the injury to aggressive intra-industry competition in 2000. Dofasco had increased its production capacity with the new line from DoSol Galva Limited Partnership and reduced prices as it sold the additional goods into a softening market. In addition, Stelco sold a significant percentage of its production as seconds and excess primes at substantially reduced prices. The capital-intensive nature of galvanized production and the need to maintain high capacity rates had the domestic industry selling these goods into a declining market and put additional downward pressure on prices.

***Certain Flat Hot-rolled
Steel Sheet and Strip***

NQ-2001-001

*Finding:
No Injury/Injury
(August 17, 2001)*

There was insufficient evidence to suggest that imports of dumped or subsidized goods from the subject countries threatened to cause injury. Imported goods were declining and their prices continued to be higher than domestically produced goods. According to testimony, the foreign producers had a diversified export strategy to seek out other more lucrative markets as demand declined in North America. The Tribunal concluded that imports appeared to serve as a secondary source of supply to the domestic market, particularly in periods of tight domestic supply. In addition, the Tribunal noted that dumping margins for some countries and suppliers were very low. Given these numbers and the trend away from the Canadian market, it was difficult to conclude that dumped and subsidized imports were likely to cause injury to the domestic industry in the foreseeable future.

This inquiry concerned the dumping of certain hot-rolled steel sheet and strip from Brazil, Bulgaria, China, Chinese Taipei, India, Korea, former Yugoslav Republic of Macedonia (Macedonia), New Zealand, Saudi Arabia, South Africa, Ukraine and Yugoslavia, and the subsidizing of hot-rolled steel sheet from India. The domestic industry consisted of Stelco, Dofasco, Algoma Steel Inc. (Algoma), Ispat and IPSCO Inc. (IPSCO). In Inquiry No. NQ-98-004 in 1999, the Tribunal had found that dumped imports from France, Romania, the Slovak Republic and Russia had caused injury to the domestic industry.

The Tribunal's analysis focused on the impact of the dumping and subsidizing primarily on domestic sales of hot-rolled sheet to the merchant market. However, the Tribunal assessed the materiality of the injury caused by the dumping and subsidizing against the domestic industry's production of like goods as a whole, including goods produced for further transformation and export.

The Tribunal assessed the cumulative effect of the dumped and subsidized goods from all the subject countries, except those from Korea, New Zealand and Saudi Arabia. For those countries, the conditions of competition did not warrant a cumulative analysis, and the Tribunal conducted separate analyses of the effects of the dumped imports from each country.

In the second half of 2000, the domestic producers suffered a significant deterioration in performance in the domestic merchant market in the form of reduced market share, price erosion, and reduced gross margins and net profits. As the imports covered by the 1999 finding declined to negligible levels in 2000, almost all gains in market share made by the cumulated countries and the United States were at the expense of the domestic industry and the named countries in the 1999 finding. The domestic producers saw their market share decrease from 76 percent in 1999 to 65 percent in 2000.

The Tribunal found that the dumping of hot-rolled steel sheet products from Korea, New Zealand and Saudi Arabia had not caused material injury to the domestic industry. It also concluded that there were no clearly foreseen and imminent circumstances under which the dumping in Canada of hot-rolled steel sheet products from Korea, New Zealand and Saudi Arabia would threaten to cause material injury.

The Tribunal found that, while the cumulated imports had little impact on the end-user sector, which represented 36 percent of total domestic sales in 2000, they were responsible for a significant part of the price erosion in the pipe and tube sector (25 percent of domestic sales in 2000) and most of the price erosion in the service centre sector. It was clear that the subject goods from the cumulated countries led the prices down in both of these key sectors.

The Tribunal concluded that, absent the dumping and subsidizing, the domestic producers' market share, volume of sales, prices and utilization of plant capacity would have been higher. Further, the lost volume and the price erosion accounted for a significant part of the financial losses incurred by the domestic producers in the second half of 2000. The Tribunal also concluded that the injury suffered by the domestic industry was material, when assessed against the total revenues generated by hot-rolled steel sheet production, including production for the domestic and export merchant markets and further internal processing.

The Tribunal also examined other factors to ensure that injury caused by such factors was not attributed to the dumped and subsidized imports. They included imports from non-subject countries, the financial difficulties of Algoma and Maksteel Inc., the domestic producers' capacity to supply the market, the contraction of demand in the second half of 2000 and the competition between domestic producers. However, the Tribunal found that many factors did not contribute in a significant way to domestic industry's injury. It did not ascribe to the dumping and subsidizing the injury caused by other factors.

***Certain Cold-rolled
Steel Sheet***

NQ-2001-002

*Finding:
No Injury
(October 9, 2001)*

This inquiry concerned dumped imports of cold-rolled steel sheet from Brazil, China, Chinese Taipei, Macedonia, Italy, Luxembourg, Malaysia, Korea and South Africa. Cold-rolled sheet for the production of galvanized sheet and for automotive end use, and for the production of tin-plate or pre-painted steel were excluded from the inquiry. The domestic industry consisted of Dofasco, Ispat and Stelco.

The Tribunal found that the volume of dumped goods from each of Macedonia, Italy, Luxembourg and Malaysia was negligible, and terminated its inquiry with respect to those imports. It assessed the cumulative effect of the dumping from the other five subject countries.

The Tribunal focused its analysis on the steel service centre sector, which accounted for about 98 percent of sales of the subject goods. It found that, prior to mid-2000, when market conditions were robust due to the strong economy, steel service centres built up their inventories to meet the expected higher levels of demand. They turned to imports from the subject countries because of concerns about the domestic mills' ability to meet their requirements. The Tribunal also found that, during this period, domestic prices and subject country prices increased, with subject country prices eventually matching domestic prices. In the Tribunal's opinion, the industry was not affected by the import competition. In fact, the industry experienced increasing gross margins and net income during this period. Accordingly, the Tribunal found that the industry had not suffered injury from dumped imports prior to mid-2000.

In the second half of 2000, the industry's prices softened. The softening accelerated in the first half of 2001. As domestic prices declined, the industry's unit gross margins were cut almost in half from the second to the third quarter of 2000 and fell below unit costs. By the first quarter of 2001, the industry began to sustain significant losses at the gross margin level and in average unit net income. The Tribunal found that the industry suffered significant injury after mid-2000.

However, the Tribunal was not convinced that dumped imports caused the industry's injury. It observed that, by mid-2000, in light of the emerging economic downturn, steel service centres had collectively cut back on their purchases of both imported and domestically produced cold-rolled sheet in order to reduce their inventories. These reached targeted levels by the fourth quarter of 2000. As sales plummeted in the third quarter of 2000, the industry began reducing its prices, and its sales to steel service centres increased substantially in the fourth quarter of 2000. The Tribunal found that this increase offset a decline in plant loading for other cold-rolled steel sheet, in particular that used by the automotive sector. As domestic prices declined, average import prices from the subject countries rose in the third and fourth quarters of 2000 before declining in the first quarter of 2001. The Tribunal found that, although subject country prices declined below domestic prices, the price spread was not sufficient to provide an incentive to buy imports to any great extent.

The Tribunal found that other non-dumping factors had also adversely affected the industry's performance in the period after mid-2000. They included Stelco's unanticipated problems with the upgrade of its four-stand cold-roll mill, resulting in higher costs and high volumes of seconds that depressed prime prices.

The Tribunal noted that, while the economic downturn made the industry vulnerable to dumping, it also made the Canadian market unattractive to imports from the subject countries. Such imports, as a whole, withdrew from the Canadian

**Leather Footwear with
Metal Toe Caps**

NQ-2001-003

*Finding:
Threat of Injury
(December 27, 2001)*

market as conditions deteriorated. The Tribunal had no reason to believe that they would return under the even worse conditions that eventually prevailed. Accordingly, it found that there was no threat of injury from dumping by the subject countries.

This inquiry concerned dumped imports of leather footwear with metal toe caps from China. The domestic industry consisted of G.A. Boulet Inc., Canada West Shoe Manufacturing Inc., L.P. Royer Inc., STC Footwear, Tatra Shoe Manufacturing Inc. and Terra Footwear, members of The Shoe Manufacturers' Association of Canada, and Dayton Shoe Co. Ltd., Hichaud Inc., Mellow Walk Footwear Inc., Vercorp Inc. and Viberg Boot Manufacturing Ltd. The Tribunal was of the view that leather safety boots and leather safety shoes resembled one another, had essentially the same functional end use and were a single class of goods.

The Tribunal found that trends in the producers' main economic indicators were generally positive for the period of inquiry. Production rose, and sales and prices increased at a faster rate than the apparent market. Financial performance also improved, with producers' combined gross margin increasing from 21 percent of net sales in 1998 to 24 percent in 2000. Their combined operating income also increased as a percentage of net sales. The Tribunal was not convinced that the producers would have increased sales volume in the absence of dumping. Accordingly, it concluded that the dumping of leather safety footwear had not caused injury.

However, the Tribunal noted that the subject imports grew dramatically from near zero in the early 1990s to capture 63 percent of the market in the first six months of 2001. They continued to grow in the months of August and September. The Tribunal observed that China accounted for 51 percent of global footwear production in 1999. Much of the growth in production had come from an increase in footwear exports.

The Tribunal found that Chinese exports of safety footwear increasingly included high-end products and branded footwear that were formerly produced in Canada. It also noted that the average wholesale unit prices of imports were less than those of the producers. The Tribunal concluded that price gaps of this magnitude, combined with the continuing improvement in the quality of the subject goods, would lead consumers to increasingly question whether the price spreads were justified. It concluded that the dumped imports of safety footwear from China threatened to injure Canadian producers.

The Tribunal excluded from its finding athletic-style and hiking-style leather safety shoes of cement construction, and certain leather boots with metal toe caps and rubber outsoles, for use in motorcycle riding.

Final Injury Inquiries in Progress at the End of the Fiscal Year

There was one inquiry in progress at the end of the fiscal year.

Fresh Tomatoes (NQ-2001-004) concerns dumped imports from the United States. The Canadian Tomato Trade Alliance is participating in the inquiry for Canadian greenhouse growers of fresh tomatoes.

Table 2 summarizes the Tribunal's final injury inquiry activities during the fiscal year.

Public Interest Inquiry Under Section 45 of SIMA

The Tribunal may initiate a public interest inquiry following a finding of injury caused by dumped or subsidized imports. The Tribunal may decide, either as a result of a request from an interested person or on its own initiative, that there are reasonable grounds to consider that the imposition of part or all of the duties may not be in the public interest. The Tribunal then conducts a public interest inquiry pursuant to section 45 of SIMA. The result of this inquiry may be a report to the Minister of Finance recommending that the duties be reduced and by how much. The Tribunal received no requests for public interest inquiries during the fiscal year.

Importer Ruling

Under section 90 of SIMA, the Commissioner may request the Tribunal to rule on the question as to which of two or more persons is the importer of goods on which anti-dumping or countervailing duties are payable. If the Tribunal identifies as the importer a person other than the one specified by the Commissioner, the Tribunal may reconsider its original finding of material injury under section 91.

There were no requests for importer rulings in the fiscal year.

Requests for Interim Reviews

The Tribunal may review its findings of injury or orders at any time, on its own initiative or at the request of the Minister of Finance, the Commissioner or any other person or government (section 76.01 of SIMA). The Tribunal commences an interim review where one is warranted and determines if the finding or order (or any aspect of it) should be rescinded or continued to its expiry date, with or without amendment.

An interim review may be warranted where there is a reasonable indication that new facts have arisen or that there has been a change in the circumstances that led to the finding or order. For example, since the finding or order, the domestic industry may have ceased production of like goods or foreign subsidies may have been terminated. An interim review may also be warranted where there are facts that, although in existence, were not put into evidence during the

previous review or inquiry and were not discoverable by the exercise of reasonable diligence at that time.

There were two requests for interim reviews in the fiscal year.

On November 20, 2001, the China Chamber of Commerce for Import & Export of Foodstuffs, Native Produce and Animal By-products (China Chamber of Commerce) and Cangshan County Beidouxing Co., Ltd. (CCBC) filed a properly documented request for an interim review of the Tribunal's finding in *Garlic, Fresh or Frozen* (NQ-2000-006).

The Tribunal considered the likely impact of the new facts and changes in circumstances referred to by the China Chamber of Commerce and CCBC and determined that they did not warrant an interim review.

On February 13, 2002, the BC Vegetable Marketing Commission requested that the Tribunal rescind immediately its order due to expire on November 28, 2002, in *Fresh Iceberg Lettuce* (RR-97-002). On March 15, 2002, the Tribunal gave notice (RD-2001-002) that, pursuant to subsection 76.01(1) of SIMA, it had decided to conduct an interim review of its order made on November 28, 1997, in Review No. RR-97-002, continuing, without amendment, its finding made on November 30, 1992, in Inquiry No. NQ-92-001, concerning fresh Iceberg (head) lettuce, originating in or exported from the United States of America, for use or consumption in the province of British Columbia.

Expiry Reviews

Subsection 76.03(1) of SIMA provides that a finding or order expires after five years, unless an expiry review has been initiated. Not later than 10 months before the expiry date of the order or finding, the Secretary publishes a notice of expiry in the *Canada Gazette*. The notice invites persons and governments to submit their views on whether the order or finding should be reviewed and gives direction on the issues that should be addressed in the submissions. The Tribunal initiates a review of the order or finding, as requested, if it determines that such a review is warranted. It then issues a notice of review and notifies the Commissioner of its decision. The notice of expiry review is published in the *Canada Gazette* and forwarded to all known interested parties.

During the fiscal year, the Tribunal issued eight notices of expiry. The Tribunal decided that expiry reviews were warranted in six cases and initiated reviews. In *Fresh Iceberg Lettuce* (LE-2001-007), there was no request for an expiry review and no review was initiated. In *Bicycles and Frames* (LE-2001-008), no decision had been taken before the end of the fiscal year.

Expiry Reviews Completed in the Fiscal Year

The purpose of an expiry review is to determine whether anti-dumping or countervailing duties remain necessary. There are two phases in an expiry review. The first phase is the investigation by the Commissioner to determine whether there is a likelihood of resumed or continued dumping or subsidizing if the finding or order expires. If the Commissioner determines that such likelihood exists with respect to any of the goods, the second phase is the Tribunal's inquiry into the likelihood of injury or retardation. If the Commissioner determines that such a likelihood does not exist for any of the goods, the Tribunal does not consider those goods in its subsequent determination of the likelihood of injury and issues an order rescinding the order or finding with respect to those goods.

The Tribunal's procedures in expiry reviews are similar to those in final injury inquiries.

Upon completion of an expiry review, the Tribunal issues an order with reasons, rescinding or continuing a finding or order, with or without amendment. If a finding or order is continued, it remains in force for a further five years, unless a review has been initiated and the finding or order is rescinded. If the finding or order is rescinded, imports are no longer subject to anti-dumping or countervailing duties.

In the fiscal year, the Tribunal completed three expiry reviews.

On July 4, 2001, the Tribunal rescinded its order in *Certain Oil and Gas Well Casing* (RR-2000-001) respecting dumped imports from Korea and the United States. The following Canadian producers, IPSCO, Prudential Steel Limited, Algoma, Algoma Seamless Tubulars Inc. and Stelpipe Ltd. (Stelpipe), and several importers and foreign producers participated in the expiry review.

On July 24, 2001 the Tribunal continued its order in *Certain Carbon Steel Welded Pipe* (RR-2000-002) respecting dumped imports from Argentina, India, Romania, Chinese Taipei, Thailand and Brazil, and rescinded the order respecting imports from Venezuela. Three domestic producers, Stelpipe, Ispat and IPSCO, and one foreign producer participated in the expiry review.

On March 20, 2002, the Tribunal continued its finding in *Fresh Garlic* (RR-2001-001) respecting dumped imports from China. The Garlic Growers Association of Ontario, China Chamber of Commerce and a Chinese grower/exporter participated in the expiry review.

Expiry Reviews in Progress at the End of the Fiscal Year

Five expiry reviews were in progress at the end of the fiscal year. They were reviews of the orders in: (1) *Polyiso Insulation Board* (RR-2001-002) respecting dumped imports from the United States; (2) *Machine Tufted Carpeting* (RR-2001-003) respecting dumped imports from the United States; (3) *Concrete Panels* (RR-2001-004) respecting dumped imports from the United States; (4) *Certain Waterproof Rubber Footwear* (RR-2001-005) respecting dumped imports from China; and (5) *Certain Hot-rolled Carbon Steel Plate* (RR-2001-006) respecting dumped imports from Mexico, China, South Africa and Russia.

On November 27 and December 7, 2001, respectively, the Commissioner determined that the expiry of the findings made by the Tribunal in both *Polyiso Insulation Board* and in *Machine Tufted Carpeting* is unlikely to result in the continuation or resumption of dumping of the subject goods. The Tribunal will issue orders rescinding these findings on their date of expiry.

Table 3 summarizes the Tribunal's expiry review activities during the fiscal year. Table 4 lists Tribunal findings and orders in force as of March 31, 2002.

Judicial or Panel Review of SIMA Decisions

Any person affected by Tribunal findings or orders can request judicial review by the Federal Court of Canada on grounds of alleged denial of natural justice and error of fact or law. In cases involving goods from the United States and Mexico, requests may be made for judicial review by the Federal Court of Canada or for a review by a NAFTA binational panel. Table 5 lists the Tribunal's decisions under section 43, 44 or 76 of SIMA that were before the Federal Court of Canada for judicial review or for review by a binational panel in the fiscal year.

During the fiscal year, the Federal Court of Canada had not yet heard applications to review the Tribunal's findings in *Certain Corrosion-resistant Steel Sheet* (NQ-2000-008), *Oil and Gas Well Casing* (RR-2000-001), *Certain Flat Hot-rolled Steel Sheet* (NQ-2001-001), *Certain Cold-rolled Steel Sheet* (NQ-2001-002) and *Concrete Panels* (LE-2001-004).

During the fiscal year, a binational panel affirmed the Tribunal's findings in *Certain Refrigerators, Dishwashers and Dryers* (NQ-2000-001). At the end of the fiscal year, a binational panel had not yet heard an application to review the Tribunal's finding in *Iodinated Contrast Media* (NQ-99-003).

WTO Dispute Resolution

Governments that are members of the WTO may challenge Tribunal injury findings or orders in dumping and countervailing cases before the WTO dispute settlement bodies. This is initiated by intergovernmental consultations. There are no Tribunal findings or orders before the dispute settlement bodies of the WTO.

TABLE 1**Preliminary Determinations of Injury Issued Under Subsection 37.1(1) of SIMA
Between April 1, 2001, and March 31, 2002**

Preliminary Injury Inquiry No.	Product	Country	Date of Determination	Determination
PI-2000-007	Certain Cold-rolled Steel Sheet Products	Brazil, Chinese Taipei, Macedonia, Italy, Luxembourg, Malaysia, China, Korea and South Africa	May 11, 2001	Injury
PI-2001-001	Leather Footwear with Metal Toe Caps	China	August 14, 2001	Injury
PI-2001-002	Fresh Tomatoes	United States	January 8, 2002	Injury
PI-2001-003	Automotive Laminated Windshields	China	February 15, 2002	Injury

TABLE 2

Findings Issued Under Section 43 of SIMA Between April 1, 2001, and March 31, 2002, and Inquiries Under Section 42 of SIMA in Progress at Year End

Inquiry No.	Product	Country	Date of Finding/Decision	Finding/Decision
NQ-2000-006	Garlic, Fresh or Frozen	China and Vietnam	May 2, 2001	Injury
NQ-2000-007	Certain Concrete Reinforcing Bar	Indonesia, Japan, Latvia, Republic of Moldova, Poland, Chinese Taipei and Ukraine	June 1, 2001	Injury
NQ-2000-008	Certain Corrosion-resistant Steel Sheet	China, India, Malaysia, Russian Federation, South Africa and Chinese Taipei	July 3, 2001	No injury/No threat of injury
NQ-2001-001	Certain Flat Hot-rolled Steel Sheet and Strip	Brazil, Bulgaria, China, Chinese Taipei, India, Korea, Macedonia, New Zealand, Saudi Arabia, South Africa, Ukraine and Yugoslavia	August 17, 2001	(1) No injury/No threat of injury – Korea, New Zealand and Saudi Arabia (2) Injury – Brazil, Bulgaria, China, Chinese Taipei, India, Macedonia, South Africa, Ukraine and Yugoslavia
NQ-2001-002	Certain Cold-rolled Steel Sheet	Brazil, Chinese Taipei, Macedonia, Italy, Luxembourg, Malaysia, China, Korea and South Africa	October 9, 2001	(1) Inquiry terminated – Macedonia, Italy, Luxembourg and Malaysia (2) No injury/No threat of injury – Brazil, Chinese Taipei, China, Korea and South Africa
NQ-2001-003	Leather Footwear with Metal Toe Caps	China	December 27, 2001	No injury/Threat of injury
NQ-2001-004	Fresh Tomatoes	United States	In progress	

TABLE 3

Orders Issued Under Section 76.03 of SIMA Between April 1, 2001, and March 31, 2002, and Reviews in Progress at Year End

Review No.	Product	Country	Date of Order	Order
RR-2000-001	Certain Oil and Gas Well Casing	Korea and United States	July 4, 2001	Orders rescinded
RR-2000-002	Certain Carbon Steel Welded Pipe	Argentina, India, Romania, Chinese Taipei, Thailand, Venezuela and Brazil	July 24, 2001	Order continued Order rescinded/Venezuela
RR-2001-001	Fresh Garlic	China	March 20, 2002	Order continued
LE-2001-008	Bicycles and Frames	Chinese Taipei and China	In progress	
RR-2001-002	Polyiso Insulation Board	United States	In progress	
RR-2001-003	Machine Tufted Carpeting	United States	In progress	
RR-2001-004	Concrete Panels	United States	In progress	
RR-2001-005	Certain Waterproof Rubber Footwear	China	In progress	
RR-2001-006	Certain Hot-rolled Carbon Steel Plate	Mexico, China, South Africa and Russian Federation	In progress	

TABLE 4

SIMA Findings and Orders in Force as of March 31, 2002¹

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
NQ-96-003	April 11, 1997	Polyiso Insulation Board	United States	
RR-96-004	April 21, 1997	Machine Tufted Carpeting	United States	NQ-91-006 (April 21, 1992)
NQ-96-004	June 27, 1997	Concrete Panels	United States	
RR-97-001	October 20, 1997	Certain Waterproof Rubber Footwear	China	ADT-4-79 (May 25, 1979) ADT-2-82 (April 23, 1982) R-7-87 (October 22, 1987) RR-92-001 (October 21, 1992)
NQ-97-001	October 27, 1997	Certain Hot-rolled Carbon Steel Plate	Mexico, China, South Africa and Russian Federation	
RR-97-002	November 28, 1997	Fresh Iceberg (Head) Lettuce	United States	NQ-92-001 (November 30, 1992)
RR-97-003	December 10, 1997	Bicycles and Frames	Chinese Taipei and China	NQ-92-002 (December 11, 1992)
NQ-97-002	April 29, 1998	Certain Prepared Baby Foods	United States	
NQ-98-001	September 4, 1998	Certain Stainless Steel Round Bar	Germany, France, India, Italy, Japan, Spain, Sweden, Chinese Taipei and United Kingdom	
RR-98-001	November 18, 1998	Preformed Fibreglass Pipe Insulation	United States	NQ-93-002 (November 19, 1993)
RR-98-004	May 17, 1999	Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate	Italy, Korea, Spain and Ukraine	NQ-93-004 (May 17, 1994)
NQ-98-003	June 18, 1999	Certain Stainless Steel Round Bar	Korea	
RR-98-005	June 22, 1999	12-gauge Shotshells	Czech Republic and Republic of Hungary	NQ-93-005 (June 22, 1994)
NQ-98-004	July 2, 1999	Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products	France, Romania, Russian Federation and Slovak Republic	

1. To determine the precise product coverage, refer to the findings or orders as identified in the first column of the table.

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
RR-98-006	July 19, 1999	Black Granite Memorials and Black Granite Slabs	India	NQ-93-006 (July 20, 1994)
RR-98-007	July 28, 1999	Certain Corrosion-resistant Steel Sheet Products	Brazil, Germany, Japan, Korea and United States	NQ-93-007 (July 29, 1994)
NQ-99-001	August 27, 1999	Certain Cold-rolled Steel Sheet Products	Belgium, Russian Federation, Slovak Republic and Turkey	
NQ-99-002	January 12, 2000	Certain Concrete Reinforcing Bar	Cuba, Korea and Turkey	
RR-99-002	March 20, 2000	Subsidized Canned Ham	Denmark and Netherlands	GIC-1-84 (August 7, 1984) RR-89-003 (March 16, 1990) RR-94-002 (March 21, 1995)
NQ-99-003	May 1, 2000	Iodinated Contrast Media	United States (including the Commonwealth of Puerto Rico)	
RR-99-003	May 1, 2000	Women's Boots	China	RR-94-003 (May 2, 1995) NQ-89-003 (May 3, 1990)
RR-99-004	June 5, 2000	Carbon Steel Welded Pipe	Korea	RR-94-004 (June 5, 1995) RR-89-008 (June 5, 1990) ADT-6-83 (June 28, 1983)
NQ-99-004	June 27, 2000	Certain Carbon Steel Plate	Brazil, Finland, India, Indonesia, Thailand and Ukraine	
NQ-2000-001	August 1, 2000	Certain Refrigerators, Dishwashers and Dryers	United States (WCI and Whirlpool)	
RR-99-005	September 13, 2000	Whole Potatoes	United States	RR-94-007 (September 14, 1995) RR-89-010 (September 14, 1990) CIT-16-85 (April 18, 1986) ADT-4-84 (June 4, 1984)

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
NQ-2000-002	October 27, 2000	Certain Stainless Steel Round Bar	Brazil and India	
RR-99-006	November 3, 2000	Refined Sugar	United States, Denmark, Germany, Netherlands, United Kingdom and European Union	NQ-95-002 (November 6, 1995)
NQ-2000-004	December 8, 2000	Waterproof Footwear and Bottoms	China	
NQ-2000-006	May 2, 2001	Garlic, Fresh or Frozen	China and Vietnam	
NQ-2000-007	June 1, 2001	Certain Concrete Reinforcing Bar	Indonesia, Japan, Latvia, Republic of Moldova, Poland, Chinese Taipei and Ukraine	
RR-2000-002	July 24, 2001	Certain Carbon Steel Welded Pipe	Argentina, India, Romania, Chinese Taipei, Thailand and Brazil	NQ-90-005 (July 26, 1991) NQ-91-003 (January 23, 1992) RR-95-002 (July 25, 1996)
NQ-2001-001	August 17, 2001	Certain Flat Hot-rolled Steel Sheet and Strip	Brazil, Bulgaria, China, Chinese Taipei, India, Macedonia, South Africa, Ukraine and Yugoslavia	
NQ-2001-003	December 27, 2001	Leather Footwear with Metal Toe Caps	China	
RR-2001-001	March 20, 2002	Fresh Garlic	China	NQ-96-002 (March 21, 1997)

TABLE 5**SIMA Cases Before the Federal Court of Canada or a Binational Panel Between April 1, 2001, and March 31, 2002**

Case No.	Product	Country of Origin	Forum	File No./Status
NQ-99-003	Iodinated Contrast Media	United States	BP	CDA-USA-2000-1904-02
NQ-2000-001	Certain Refrigerators, Dishwashers and Dryers	United States	BP	CDA-USA-2000-1904-04 Tribunal decision affirmed (January 16, 2002)
NQ-2000-008	Certain Corrosion-resistant Steel Sheet	China, India, Malaysia, Russian Federation, South Africa and Chinese Taipei	FC	A—455—01
NQ-2001-001	Certain Flat Hot-rolled Steel Sheet	Brazil, Bulgaria, China, Chinese Taipei, India, Korea, Macedonia, New Zealand, Saudi Arabia, South Africa, Ukraine and Yugoslavia	FC	A—528—01 Withdrawn (January 4, 2002)
NQ-2001-002	Certain Cold-rolled Steel Sheet	Brazil, Chinese Taipei, Macedonia, Italy, Luxembourg, Malaysia, China, Korea and South Africa	FC	A—650—01
RR-2000-001	Certain Oil and Gas Well Casing	Korea and United States	FC	A—463—01, A—472—01
LE-2001-004	Concrete Panels	United States	FC	A—657—01

Notes: FC — Federal Court of Canada
BP — Binational Panel

CHAPTER IV

APPEALS

Introduction

The Tribunal hears appeals from decisions of the Commissioner under the *Customs Act* and SIMA or of the Minister of National Revenue (the Minister) under the *Excise Tax Act*. The Tribunal hears appeals relating to the tariff classification and value for duty of goods imported into Canada and relating to the origin of goods imported from the United States, Mexico and Chile under the *Customs Act*. The Tribunal also hears and decides appeals concerning the application, to imported goods, of a Tribunal finding or order concerning dumping or subsidizing and the normal value or export price or subsidy of imported goods under SIMA. Under the *Excise Tax Act*, a person may appeal to the Tribunal the Minister's decision about an assessment or determination of federal sales tax or excise tax.

The Tribunal strives to be informal and accessible. However, there are certain procedures and time constraints that are imposed by law and by the Tribunal. For example, the appeal process is set in motion with a notice (or letter) of appeal, in writing, sent to the Secretary of the Tribunal within the time limit specified in the act under which the appeal is made.

Rules of Procedure

Under the Rules of Procedure, the person launching the appeal (the appellant) normally has 60 days to submit to the Tribunal a document called a "brief". Generally, the brief states under which act the appeal is launched, gives a description of the goods in issue and an indication of the points at issue between the appellant and the Minister or Commissioner (the respondent) and states why the appellant believes that the respondent's decision is incorrect. A copy of the brief must also be given to the respondent.

The respondent must also comply with time and procedural constraints. Normally, within 60 days after having received the appellant's brief, the respondent must provide the Tribunal and the appellant with a brief setting forth his position. The Secretary of the Tribunal then contacts both parties in order to schedule a hearing. Hearings are generally conducted before Tribunal members in public. The Tribunal publishes a notice of the hearing in the *Canada Gazette* to allow other interested persons to attend. Depending on the complexity and precedential nature of the matter at issue, appeals will be heard by a panel of one or three members. Persons may intervene in an appeal by specifying the nature of their interest in the appeal and by indicating the reason for intervening and how they may assist the Tribunal in the resolution of the appeal.

Hearings

An individual may present a case before the Tribunal in person, or be represented by legal counsel or by any other representative. The respondent is generally represented by counsel from the Department of Justice.

Hearing procedures are designed to ensure that the appellant and the respondent are given a full opportunity to make their case. They also enable the Tribunal to have the best information possible to make a decision. As in a court, the appellant and the respondent can call witnesses, and these witnesses are questioned under oath or affirmation by the opposing parties, as well as by Tribunal members, in order to test the validity of their evidence. When all the evidence is gathered, parties may present arguments in support of their respective position.

The Tribunal, on its own initiative or on the request of the appellant or the respondent, may decide to hold a hearing by way of written submissions. In that case, the Tribunal publishes a notice of the hearing in the *Canada Gazette* to allow other interested persons to participate. In the notice, the Tribunal establishes the manner and timing for filing the submissions and the requirement, if appropriate, for the parties to file an agreed statement of facts.

The Tribunal also hears appeals by way of electronic transmission, either by teleconference or videoconference.

Teleconference hearings are used mainly to dispose of preliminary motions and jurisdictional issues where witnesses are not required to attend or give evidence.

Videoconference hearings are used as an alternative to holding hearings in locations across Canada or requiring parties from outside Ontario or Quebec to present themselves at the Tribunal's premises in Ottawa. The procedures are very similar to hearings held before the Tribunal at its premises. However, the Tribunal requires that written materials, exhibits, aids to argument, etc., be filed with the Tribunal prior to the videoconference hearing.

Usually, within 120 days of the hearing, the Tribunal issues a decision on the matters in dispute, including the reasons for its decision.

If the appellant, the respondent or an intervener disagrees with the Tribunal's decision, the decision can be appealed to the Federal Court of Canada.

Legislative Amendments to the *Customs Act* that Affect the Tribunal's Jurisdiction

On November 29, 2001, legislative amendments to the *Customs Act* came into force. Section 67.1 of the *Customs Act* now provides a means by which a person who has failed to file a notice of appeal within the 90-day period set out in section 67 can apply to the Tribunal for a time extension.

In order to be granted an extension under section 67.1 of the *Customs Act*, the person making the application must meet several conditions. Firstly, the application must have been made within one year after the expiry of the 90-day period set out in section 67. Secondly, the person making the application must demonstrate that the person was unable to act or to give a mandate to act in the person's name or the person had a *bona fide* intention to appeal. Thirdly, the person making the application must demonstrate that it would be just and equitable to grant the application. Fourthly, the application must have been made as soon as circumstances permitted. Lastly, there must exist reasonable grounds for the appeal. The application must also set out the reasons why the notice of appeal was not filed on time.

If the person making the application meets the above conditions, the Tribunal may make an order extending the time for appealing and may impose any terms that it considers just. Contrary to section 81.32 of the *Excise Tax Act*, subsection 67.1(3) of the *Customs Act* requires that the application for the time extension be accompanied by the notice of appeal. This means that, if the Tribunal decides to grant an extension, it will have to issue an order extending the time limit for filing a notice of appeal, notwithstanding the fact that the notice of appeal will have already been filed.

Under section 60 of the *Customs Act*, an importer can request a redetermination of the origin, tariff classification or value for duty of imported goods, within 90 days after being given a notice of a determination. Prior to the coming into force of sections 60.1 and 60.2, once the 90-day period had expired, the importer had no right to request a redetermination and did not have any other recourse.

Under section 60.1 of the *Customs Act*, an importer will have the option, once the 90-day period has expired, but within one year from the expiry date, to make an application to the Commissioner for an extension of the time to file a request for a redetermination. If the Commissioner refuses to grant the extension, the importer can take advantage of section 60.2 and request an extension directly from the Tribunal. Section 60.2 of the *Customs Act* provides that a person who has made an application for an extension of time to the Commissioner may apply to the Tribunal to have that application granted where the Commissioner refused it or where 90 days have elapsed since the application was made and the Commissioner has not notified the person of his decision. The application must be

made by filing with the Commissioner and the Secretary of the Tribunal a copy of the application or of the notice of decision made by the Commissioner. The Tribunal may dismiss or grant the application and, in granting the application, it may impose any terms it considers just or order that the request is valid as of the date of the order.

In order to be granted an extension under subsection 60.2(4) of the *Customs Act*, the person making the application must meet several conditions. Firstly, the application must have been made within one year after the expiry of the 90-day period set out in section 60. Secondly, the person making the application must demonstrate that the person was unable to act or to give a mandate to act in the person's name or the person had a *bona fide* intention to appeal. Thirdly, the person making the application must demonstrate that it would be just and equitable to grant the application. Fourthly, the application must have been made as soon as circumstances permitted. Lastly, there must exist reasonable grounds for the appeal. The application must also set out the reasons why the notice of appeal was not filed on time.

During the fiscal year, the Tribunal heard 33 appeals of which 19 related to the *Customs Act*, 12 to the *Excise Tax Act* and 2 to SIMA. Decisions were issued in 59 cases, of which 17 were heard during the fiscal year.

Appeals Considered

Decisions on Appeals

Act	Allowed	Allowed in Part	Dismissed	Total
<i>Customs Act</i>	10	8	28	46
<i>Excise Tax Act</i>	-	1	11	12
SIMA	-	-	1	1

Table 1 of this chapter lists the appeal decisions rendered in the fiscal year.

Summary of Selected Decisions

Of the many cases heard by the Tribunal in carrying out its appeal functions, several decisions stand out, either because of the particular nature of the product in issue or because of the legal significance of the case. Brief summaries of a representative sample of such appeals follow, of which three were heard under the *Customs Act*, one under the *Excise Tax Act* and one under SIMA. These summaries have been prepared for general information purposes only and have no legal status.

Costco Canada Inc.
v.
CCRA
AP-2000-050

Decision:
Appeal dismissed
(November 30, 2001)

This was an appeal under subsection 67(1) of the former and current *Customs Act* from decisions of the Commissioner dated September 14, 2000, pursuant to subsection 63(3) of the former *Customs Act* and subsection 60(4) of the current *Customs Act*.

The issue in this appeal concerned the classification of cases containing art materials. The respondent claimed that these cases should be classified as other pencils, crayons and pastels (tariff item No. 9609.90.00) or as felt-tipped pens (tariff item No. 9608.20.00). The appellant argued that the cases should be classified as other toys (tariff item No. 9503.90.00) or as other toys, put up in sets or outfits (tariff item No. 9503.70.90).

The appeal was dismissed. The Tribunal determined that the goods in issue were not classifiable as toys, given that nearly one half of the contents were made up of articles that are excluded from heading No. 95.03. Rather, the goods in issue were properly classified, pursuant to Rule 3 (b) of the *General Rules for the Interpretation of the Harmonized System* (the General Rules), under tariff item No. 9609.90.00 as other pencils, crayons and pastels. These objects were found to comprise approximately 60 percent of the goods in issue.

Les Produits Bariatrix
International Inc.
v.
CCRA
AP-2000-052

Decision:
Appeal dismissed
(February 21, 2002)

The respondent issued a redetermination in respect of goods imported by the appellant, requiring the payment of anti-dumping duties in accordance with the Tribunal's findings in Inquiry No. NQ-95-002. The redetermination was based on the respondent's finding that the product in issue, imported by the appellant from the United States, was refined sugar and of the same description as the goods to which the Tribunal's findings apply.

In determining that the product in issue was refined sugar, the respondent relied on results of polarimetric testing done on samples of the product by the laboratory at the CCRA. According to the subheading note in Chapter 17, a polarimeter reading of less than 99.5 degrees indicates raw sugar.

The appellant argued that criteria for the description of the sugar, other than its polarimeter reading, indicated that the product was not refined sugar. Further, the appellant questioned the accuracy of the polarimetric testing done by the CCRA.

The appeal was dismissed. In Inquiry No. NQ-95-002, anti-dumping duties were imposed on "refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from the United States of America". The sole issue in this appeal was whether the product in issue was "refined sugar".

The statement of reasons in Inquiry No. NQ-95-002 referred to the classification under the *Harmonized Commodity Description and Coding System* of the goods to which the findings apply. Of relevance, the polarimeter reading of sugar was identified in the subheading note in Chapter 17 as a means of determining whether sugar is “raw sugar”. In addition, the *Explanatory Notes to the Harmonized Commodity Description and Coding System* (the Explanatory Notes) to heading No. 17.01 state, in part, that “refined cane . . . sugars are produced by the further processing of raw sugar.”

The Tribunal determined that, since the sucrose content by weight of the product in issue, in the dry state, corresponded to a polarimeter reading of 99.7 degrees, the product in issue was not “raw sugar”. It was also of the view that some further processing of the “raw cane sugar” had taken place. This satisfied the terms of the Explanatory Notes to heading No. 17.01, which state, in part, that “refined cane . . . sugars are produced by the further processing of raw sugar.” Moreover, in light of the extended description of the goods in Inquiry No. NQ-95-002, and specifically the reference to “other” specialty sugars, the Tribunal determined that the product in issue could also be characterized as a specialty sugar in granulated form.

**1211863 Ontario Inc.
O/A A & T Leasing
v.
MNR
AP-2000-021**

*Decision:
Appeal allowed in part
(August 1, 2001)*

This was an appeal under section 81.19 of the *Excise Tax Act* concerning an application for a refund of the excise tax on air conditioners installed in automobiles. On March 23, 2000, the Minister of National Revenue rendered a number of decisions under section 68.1, denying the appellant’s application for a refund of the excise tax imposed on air conditioners installed in exported automobiles.

The issue in this appeal was whether the appellant was entitled to a refund of the excise tax under section 68.1 of the *Excise Tax Act*, which was imposed on air conditioners installed in exported automobiles.

The appeal was allowed in part. According to the Tribunal, to be refundable under section 68.1 of the *Excise Tax Act*, the excise tax must first be payable (i.e. the automobiles must be equipped with air conditioners). Once established that it is payable, the excise tax is deemed to be included in the sale price, pursuant to section 154. Consequently, when the automobiles are sold, the tax is deemed as paid. Further, the automobiles have to be both new and exported. The respondent acknowledged that the above two conditions were met.

The Tribunal determined that the dealers’ invoices (with or without the manufacturer’s invoices), which indicated that an excise tax was included in the price of the automobile or that the automobile was equipped with an air conditioner, were sufficient to establish that an excise tax was payable. The

**Intersave West
Buying and
Merchandising
Services**

**v.
CCRA**

AP-2000-057

*Decision:
Appeal allowed
(January 7, 2002)*

Tribunal also noted that the Goods and Services Tax on the excise tax was reimbursed to the appellant, indicating that it purchased the automobiles and that the exporter paid the excise tax in this case.

The Tribunal concluded that, in all cases where the dealers' invoices, alone or together with the manufacturer's invoices, expressly stated that the excise tax was included in the sale price or that the automobiles were equipped with air conditioners, the appellant was entitled to a refund of the excise tax.

This was an appeal under section 67 of the *Customs Act* from decisions of the Commissioner pursuant to subsection 60(4) of the *Customs Act*. The issue was the proper classification of canned coconut milk.

The respondent argued that the coconut milk was properly classified as other food preparations not elsewhere specified or included (tariff item No. 2106.90.99). The appellant claimed that the product should be classified under tariff item No. 2009.80.19 as other juice of any other single fruit or, in the alternative, under tariff item No. 2008.99.90 as other fruit, nuts and other edible parts of plants.

The appeal was allowed. The product was held to be properly classified as other fruit, nuts and other edible parts of plants (tariff item No. 2008.99.90). The Tribunal noted that heading No. 20.09 covers fruit juices and vegetable juices. On reading the Explanatory Notes to heading No. 20.09, it was clear to the Tribunal that, for a normal fruit juice to be classified in heading No. 20.09, it must not contain added water. As the product in issue contained added water, even if the Tribunal were to consider the coconut milk a normal fruit juice, it would not meet the requirements of the Explanatory Notes to heading No. 20.09.

The Tribunal also examined heading Nos. 20.08 and 21.06. Heading No. 20.08 deals with fruit, nuts and other edible parts of plants. Heading No. 21.06 covers food preparations not elsewhere specified or included. The Explanatory Notes to heading No. 20.08 allow for other substances to be added to the products of this heading, as long as they do not alter the essential character of the fruit or nuts. Thus, the fact that the product in issue contains added water and a preservative does not prevent it from being classified in that heading.

The Tribunal agreed with the appellant as to the residual character of heading No. 21.06 and the fact that the Explanatory Notes to that heading exclude preparations made from fruit and nuts, provided the essential character of the preparation is given by such fruit or nuts. It concluded that the essential character of the canned coconut milk derives from the coconut itself.

**Canadian Tire
Corporation Ltd.**

**v.
CCRA**

AP-2000-056

*Decision:
Appeal allowed
(February 19, 2002)*

This was an appeal under section 67 of the *Customs Act* from three decisions of the Commissioner dated December 6, 2000, under subsection 60(4) of the *Customs Act*. The goods in issue were multi-driver and bit sets and screwdriver sets. The issue in this appeal was the proper classification of these products. The respondent determined that the goods in issue were properly classified as “screwdrivers” (tariff item No. 8205.40.00). The appellant argued the products should be classified as other “interchangeable tools” (tariff item No. 8207.90.90) or as “tool holders” (tariff item No. 8466.10.00).

The appeal was allowed. The Tribunal determined that the goods in issue were not classifiable under Rule 1 of the General Rules as screwdrivers in heading No. 82.05. It concluded that the goods in issue were in fact two articles classifiable in different headings.

The Tribunal determined that the products were sets put up for retail sale. Heading Nos. 82.07 and 84.66 refer to part only of the products in issue and were held to be equally specific and applicable. It also examined Rules 3(a) and 3(b) of the General Rules. Rule 3(a) was held to be inapplicable. Rule 3(b), however, guided the Tribunal to the conclusion that the essential character of the sets was provided by the screwdriver bits. The multi-driver and bit sets were comprised of 17 bits and the screwdriver set was made up of 28 bits, or the majority of the components. The Tribunal determined that the screwdriver bits gave the sets their broad functionality and adaptability and gave the consumer the ability to work with a range of screws. It also found that the goods in issue should be classified under tariff item No. 8207.90.90.

On June 7, 2001, the Supreme Court of Canada handed down a decision that dealt with the standard of review applicable to the Tribunal’s decisions with respect to the value for duty of imported goods under the *Customs Act*. In *Canada (Deputy Minister of National Revenue) v. Mattel Canada*, [2001] 2 S.C.R. 100, the Supreme Court of Canada decided that the appropriate standard of review applicable to the Tribunal’s decisions in such cases is correctness with respect to questions of law.

Questions of law requiring the application of principles of statutory interpretation and other concepts relating to commercial law are reviewable by the courts. The Tribunal’s decisions with respect to the value for duty of imported goods and other matters under the *Customs Act* are protected by a partial privative clause, qualified by a statutory right of appeal to the Federal Court of Appeal on “any question of law”. This right to appeal on questions of law derives from the fact that the Tribunal’s expertise does not speak to such matters, for example, as are intrinsic to commercial law.

**Important
Decision by the
Supreme Court of
Canada on the
Standard of
Review of the
Tribunal’s
Decisions**

TABLE 1

Appeal Decisions Rendered Under Section 67 of the *Customs Act*, Section 81.19 of the *Excise Tax Act* and Section 61 of SIMA Between April 1, 2001, and March 31, 2002

Appeal No.	Appellant	Date of Decision	Decision
<i>Customs Act</i>			
AP-99-045	Prins Greenhouses Ltd.	April 9, 2001	Allowed in part
AP-99-067	Toys "R" Us (Canada) Ltd.	April 12, 2001	Allowed
AP-95-149 to AP-95-165, AP-95-067 and AP-95-168	Toyota Canada Inc.	May 2, 2001	Dismissed
AP-98-041 and AP-98-060	Weiser Inc.	June 25, 2001	Allowed
AP-2000-018	Transilwrap of Canada, Ltd.	September 11, 2001	Allowed
AP-2000-028	Alliance RO-NA Home Inc.	September 17, 2001	Dismissed
AP-2000-060	Utex Corporation	September 26, 2001	Allowed
AP-2000-035	Abraham I. Goldrich	October 17, 2001	Allowed
AP-2000-047	Imation Canada Inc.	November 29, 2001	Allowed
AP-2000-050	Costco Canada Inc.	November 30, 2001	Dismissed
AP-2000-020	Bryce Rollins	December 21, 2001	Dismissed
AP-2000-059	Wayne Ericksen	January 3, 2002	Dismissed
AP-2000-057	Intersave West Buying and Merchandising Services	January 7, 2002	Allowed
AP-2000-013	Rebecca Wigod	January 10, 2002	Dismissed
AP-2000-022	Clariant (Canada) Inc.	January 25, 2002	Allowed
AP-2000-056	Canadian Tire Corporation Limited	February 19, 2002	Allowed
AP-96-230 to AP-96-236	Great Canadian Casino Company Ltd.	February 26, 2002	Allowed in part
AP-99-080	Charles Leung	February 27, 2002	Dismissed
AP-2001-019	Travis G. Parent	March 6, 2002	Dismissed
AP-2000-041	Formica Canada Inc.	March 7, 2002	Dismissed
AP-2000-040	Sable Offshore Energy Incorporated	March 15, 2002	Dismissed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
<i>Excise Tax Act</i>			
AP-91-074	Steven Fitelovitch Advertising Inc.	April 20, 2001	Dismissed
AP-99-062	Barney Printing Limited	May 15, 2001	Dismissed
AP-91-073	Howes, Waldon Associates Ltd.	May 25, 2001	Dismissed
AP-91-071 and AP-91-072	Johnston & Beaudry Advertising & Design Inc.	July 12, 2001	Dismissed
AP-2000-021	1211863 Ontario Inc. o/a A&T Leasing	August 1, 2001	Allowed in part
AP-97-086 to AP-97-090	Beatrice Foods Inc.	February 19, 2002	Dismissed
AP-99-088	Montecristo Jewellers Inc.	March 15, 2002	Dismissed
SIMA			
AP-2000-052	Les Produits Bariatrix International Inc.	February 21, 2002	Dismissed

TABLE 2**Tribunal Decisions Appealed to the Federal Court of Canada Between April 1, 2001, and March 31, 2002, and Pending as of March 31, 2002¹**

Appeal No.	Appellant	Federal Court No.
AP-89-013	Hyalin International (1986) Inc.	T—1635—92
AP-90-117	Artec Design Inc.	T—1556—92
AP-91-141	The Sheldon L. Kates Design Group Limited	T—2957—94
AP-93-123	W. Ralston (Canada) Inc.	T—2112—95
AP-93-264	Cragg & Cragg Design Group Ltd.	T—2942—94
AP-96-056	Informco Inc.	T—2689—97
AP-97-137	Asea Brown Boveri Inc.	A—171—00
AP-98-047	N.C. Cameron & Sons Ltd.	A—341—00
AP-99-062	Barney Printing Limited	T—1627—01
AP-2000-035	Abraham Goldrich	A—023—02

1. The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not participate in appeals to the Federal Court of Canada, it is unable to confirm that the list contains all Tribunal decisions appealed to the Federal Court of Canada between April 1, 2001, and March 31, 2002.

TABLE 3**Appeal Decisions of the Federal Court of Canada Rendered Between April 1, 2001, and March 31, 2002¹**

Appeal No.	Appellant	Federal Court No.	Decision	Date
AP-89-153	Mo-Tires Ltd.	T—3288—90	Discontinued	September 10, 2001
AP-90-076	Kliewer's Cabinets Ltd.	T—1331—91/ T—1986—94	Dismissed	December 28, 2001
AP-91-045	Imperial Cabinet (1980) Co. Ltd.	T—1557—92	Dismissed	December 28, 2001
AP-94-212 and AP-94-213	Chaps Ralph Lauren, A Division of 131384 Canada Inc. and Modes Alto-Regal, Inc.	A—53—98	Discontinued	November 30, 2001
AP-97-063, AP-97-067, AP-97-077, AP-97-079, AP-97-084, AP-97-085, AP-97-096, AP-97-103, AP-97-115 and AP-97-136	AYP (Canada) Inc.	A—57—00	Dismissed	May 10, 2001
AP-99-014	Patagonia International Inc.	A—820—00	Discontinued	August 3, 2001
AP-99-029 and AP-99-046	Sanyo Canada Inc.	A—605—00	Discontinued	June 1, 2001
AP-99-063	GL&V/Black Clawson-Kennedy	A—306—00	Dismissed	January 30, 2002
AP-99-083	Sandvik Tamrock Canada Inc. and Secoroc, A Division of Atlas Copco Canada Inc.	A—550—00	Allowed	November 9, 2001
AP-99-105	Yamaha Motor Canada Ltd.	A—001—01	Dismissed	January 24, 2002

1. The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not participate in appeals to the Federal Court of Canada, it is unable to confirm that the list contains all appeals that were decided between April 1, 2001, and March 31, 2002.

CHAPTER V

ECONOMIC, TRADE AND TARIFF REFERENCES AND SAFEGUARD INQUIRIES

Introduction

The CITT Act contains broad provisions under which the government or the Minister of Finance may ask the Tribunal to conduct an inquiry on any economic, trade, tariff or commercial matter. In an inquiry, the Tribunal acts in an advisory capacity, with powers to conduct research, receive submissions and representations, find facts, hold public hearings and report, with recommendations as required, to the government or the Minister of Finance.

One of the responsibilities of the Tribunal is to conduct inquiries to determine if Canadian producers are being seriously injured by increased imports of goods into Canada. The Tribunal may initiate import safeguard inquiries following a complaint by domestic producers. The Government may also direct the Tribunal to conduct import safeguard inquiries. Pursuant to an inquiry where the Tribunal determines that increased imports of the goods have caused, or are threatening to cause, serious injury to Canadian producers of like or directly competitive goods, the Government may apply import safeguard measures to assist those domestic producers.

Safeguard Inquiry

On March 21, 2002, the Tribunal was directed by Her Excellency the Governor General in Council, on the recommendation of the Minister of Finance and the Minister for International Trade, pursuant to paragraph 20(a) of the CITT Act, to inquire into and report on the importation of certain steel goods.

The purpose of this inquiry is to determine whether any of the goods subject to the inquiry is being imported into Canada from all sources in such increased quantities since the beginning of 1996, and under such conditions, as to be a principal cause of serious injury or threat thereof to domestic producers of like or directly competitive goods. If the Tribunal makes an affirmative determination with respect to a good, the Tribunal shall provide recommendations in respect of the good as to the most appropriate remedy to address, over a period of three years, the injury caused or threatened to be caused by increased imports of that good.

The goods subject to the inquiry include flat-rolled carbon and alloy steel products, carbon and alloy “long” steel products, and welded and seamless, carbon and alloy tubular steel products. The goods with respect to which the

Tribunal will conduct its inquiry are the following: flat-rolled carbon and alloy steel discrete plate; flat-rolled carbon and alloy steel hot-rolled sheet and coil; flat-rolled carbon and alloy steel cold-rolled sheet and coil; flat-rolled carbon and alloy steel corrosion-resistant sheet and coil; carbon and alloy hot-rolled bars; carbon and alloy hot-rolled shapes and light and intermediate structurals; carbon and alloy cold-drawn and finished bars and rods; and carbon and alloy concrete reinforcing bars; and welded and seamless carbon and alloy tubular steel pipe to 16" O.D.

As directed by Her Excellency, the Tribunal will submit a notice of any determination on July 4, 2002, and its report on any determination and any recommendation on August 19, 2002.

Textile Reference

Pursuant to a reference from the Minister of Finance dated July 6, 1994, as amended on March 20 and July 24, 1996, on November 26, 1997, and on August 19, 1999, the Tribunal was directed to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister of Finance.

Scope of the Reference

A domestic producer may apply for tariff relief on an imported textile input used, or proposed to be used, in its manufacturing operations. The textile inputs on which tariff relief may be requested are the fibres, yarns and fabrics of Chapters 51, 52, 53, 54, 55, 56, 58, 59 and 60; certain monofilaments or strips and textile and plastic combinations of Chapter 39; rubber thread and textile and rubber combinations of Chapter 40; and products of textile glass fibres of Chapter 70 of the schedule to the *Customs Tariff*. Since July 24, 1996, and at least until July 1, 2002, the following yarns are not included in the textile reference:

Knitting yarns, solely of cotton or solely of cotton and polyester staple fibres, measuring more than 190 decitex, of Chapter 52 or subheading No. 5509.53 other than those used to make sweaters, having a horizontal self-starting finished edge and the outer surfaces of which are constructed essentially with 9 or fewer stitches per 2 centimetres (12 or fewer stitches per inch) measured in the horizontal direction.

Types of Relief Available

The tariff relief that may be recommended by the Tribunal to the Minister of Finance ranges from the removal or reduction of tariffs on one or several, partial or complete, tariff lines, textile- and/or end-use-specific tariff provisions. In the case of requests for tariff relief on textile inputs used in the manufacture of women's swimsuits, co-ordinated beachwear and co-ordinated accessories only, the recommendation could include company-specific relief. The recommendation

could be for tariff relief for either a specific or an indeterminate period of time. However, the Tribunal will only recommend tariff relief that is administrable on a cost-effective basis.

Process

Domestic producers seeking tariff relief must file a request with the Tribunal. Producers must file with the request either samples of the textile input for which tariff relief is being sought or a National Customs Ruling from the CCRA covering the input. If the Tribunal determines that the request is properly documented, it will conduct an investigation to determine if it should recommend tariff relief.

**Filing and Notification
of a Request**

Upon receipt of a request for tariff relief, and before commencement of an investigation, the Tribunal issues a brief electronic notice on its Web site announcing the request. The minimum period of time for the notification of a request before an investigation is commenced is 30 days.

This notification is designed to increase transparency, identify potential deficiencies in the request, avoid unnecessary investigations, provide an opportunity for the domestic textile industry to contact the requester and agree on a reasonable domestic source of supply, inform other users of identical or substitutable textile inputs, prepare the domestic industry to respond to subsequent investigation questionnaires and give associations advance time for planning and consultation with their members.

Investigations

When the Tribunal is satisfied that a request is properly documented, it commences an investigation. A notice of commencement of investigation is sent to the requester, all known interested parties and any appropriate government department or agency, such as the Department of Foreign Affairs and International Trade, the Department of Industry, the Department of Finance and the CCRA. The notice is also published in the *Canada Gazette*.

In any investigation, interested parties include domestic producers, certain associations and other persons who are entitled to be heard by the Tribunal because their rights or pecuniary interests may be affected by the Tribunal's recommendations. Interested parties are given notice of the request and can participate in the investigation. Interested parties include competitors of the requester, suppliers of goods that are identical to or substitutable for the textile input and downstream users of goods produced from the textile input.

To prepare a staff investigation report, the Tribunal staff gathers information through such means as plant visits and questionnaires. Information is obtained

from the requester and interested parties, such as a domestic supplier of the textile input, for the purpose of providing a basis for determining whether the tariff relief sought will maximize net economic gains for Canada.

In normal circumstances, a public hearing is not required, and the Tribunal will dispose of the matter on the basis of the full written record, including the request, the staff investigation report and all submissions and evidence filed with the Tribunal.

The procedures for the conduct of the Tribunal's investigation envisage the full participation of the requester and all interested parties. A party, other than the requester, may file submissions, including evidence, in response to the properly documented request, the staff investigation report and any information provided by a government department or agency. The requester may subsequently file submissions with the Tribunal in response to the staff investigation report and any information provided by a government department or agency or other party.

**Recommendations to
the Minister**

The Tribunal will normally issue its recommendations, with reasons, to the Minister of Finance within 120 days from the date of commencement of the investigation. In exceptional cases, where the Tribunal determines that critical circumstances exist, it will issue its recommendations within an earlier specified time frame that it deems appropriate. The Tribunal will recommend the reduction or removal of customs duties on a textile input where it will maximize net economic gains for Canada.

Request for Review

Where the Minister of Finance has made an order for tariff relief pursuant to a recommendation of the Tribunal, certain domestic producers may make a request to the Tribunal to commence an investigation for the purpose of recommending the renewal, amendment or termination of the order. A request for the amendment or termination of the order should specify what changed circumstances justify such a request.

Review on Expiry

Where the Minister of Finance has made an order for tariff relief subject to a scheduled expiry date, the Tribunal will, before the expiry date, issue a formal notice that the tariff relief provided by the order will expire unless the Tribunal issues a recommendation that tariff relief should be continued and the Minister of Finance implements the recommendation. The notice invites interested parties to file submissions for or against continuation of tariff relief.

If no opposition to the continuation of tariff relief is received, upon receipt of submissions and information supporting the request for continuation of tariff

	<p>relief, the Tribunal may decide to recommend the continuation of tariff relief. Conversely, if no request for continuation of tariff relief is submitted, the Tribunal may decide to recommend the termination of tariff relief. If it appears that a more complete review is warranted, the Tribunal will conduct an investigation to consider whether all relevant factors that led it to recommend tariff relief continue to apply and whether extending tariff relief under such conditions would continue to provide net economic gains for Canada.</p>
Annual Status Report	<p>In accordance with the terms of reference received by the Tribunal directing it to conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their manufacturing operations, the Tribunal provided the Minister of Finance, on February 25, 2002, with its seventh annual status report on the investigation process. The status report covered the period from October 1, 2000, to September 30, 2001.</p>
Recommendations Submitted During the Fiscal Year	<p>During the fiscal year, the Tribunal issued three reports to the Minister of Finance, which related to four requests for tariff relief. At year end, two requests were under investigation. Table 1 at the end of this chapter summarizes these activities.</p>
Recommendations in Place	<p>By the end of the fiscal year, the Government had implemented 85 recommendations by the Tribunal, of which 78 are still subject to tariff relief orders. Table 3 provides a summary of recommendations currently implemented.</p> <p>The implementation of Tribunal recommendations is made by adding new tariff items to the <i>Customs Tariff</i>. During the fiscal year, these tariff items covered imports worth \$172 million (estimated) and provided tariff relief worth \$23 million (estimated); these amounts are comparable to those reported last year.</p> <p>A summary of the Tribunal's recommendations issued during the fiscal year follows.</p>
<p>Scapa Tapes North America Ltd.</p> <p><i>TR-2000-007 and TR-2000-008</i></p> <p><i>Recommendation Indeterminate tariff relief (September 13, 2001)</i></p>	<p>The Tribunal recommended to the Minister of Finance that tariff relief be granted for an indeterminate period of time on importations of woven fabrics, solely of cotton, bleached or dyed, plain weave, ring-spun, weighing not more than 100 g/m², of subheading No. 5208.21 or 5208.31, for use in the manufacture of pressure-sensitive adhesive tape.</p> <p>The Tribunal did not believe that there would be any direct commercial costs associated with the removal of the customs duty on the importation of the subject</p>

fabrics, as no domestic textile producers produced these fabrics. Accordingly, the Tribunal concluded that tariff relief would provide a yearly benefit to Scapa Tapes North America Ltd. in excess of \$500,000.

Peerless Clothing Inc.

TR-2000-005

*Recommendation:
Indeterminate tariff relief*

(October 1, 2001)

The Tribunal recommended to the Minister of Finance that tariff relief be granted for an indeterminate period of time on importations of woven fabrics, solely of combed wool or mixed solely with cotton, silk or man-made fibres, containing 95 percent or more by weight of worsted wool having an average fibre diameter of 18.5 microns or less, of a weight not exceeding 220 g/m², of subheading No 5112.19, for use in the manufacture of men's suits, jackets, blazers, vests (waistcoats) and trousers.

Two domestic textile mills opposed this request. Cleyn & Tinker Inc. (Cleyn & Tinker) argued that it produced a wide range of identical or substitutable fabrics of worsted wool, while Victor Woolen Products, Ltd. (Victor) indicated that, although it did not produce identical or substitutable fabrics, one of its subsidiaries in the United States did.

In its analysis, the Tribunal concentrated exclusively on Cleyn & Tinker because it was of the view that Victor's situation with regard to the potential availability of fabrics produced in the United States was not relevant. The Tribunal noted that Cleyn & Tinker was not, to any large extent, in the market of the very fine wool fabrics that were the subject of the request, but rather in the broader market of wool fabrics with somewhat coarser wool fibres. It further noted that the production and sales of allegedly identical or substitutable fabrics represented a small portion of Cleyn & Tinker's overall activity. The Tribunal also noted that the landed cost of the subject fabrics was, in the vast majority of cases, notably higher than the average selling price of the allegedly substitutable fabrics produced by Cleyn & Tinker.

The Tribunal recognized that, as a result of a certain degree of fabric substitutability, there may be some negative impact from tariff relief on Cleyn & Tinker. However, it was of the view that any costs would be substantially outweighed by the benefits to be gained by Peerless Clothing Inc. and other apparel manufacturers that use these fabrics. These yearly benefits were estimated to be in excess of \$3 million. Consequently, the Tribunal recommended that tariff relief be granted on these fabrics.

Beco Industries Ltd.

TR-2001-002

*Recommendation:
Indeterminate tariff
relief/No tariff relief*

(March 20, 2002)

The Tribunal recommended to the Minister of Finance that tariff relief be granted for an indeterminate period of time on importations from all countries, of woven fabrics of polyester staple fibres, containing less than 85 percent by weight of polyester, mixed solely with cotton, printed, plain weave, of a weight not exceeding 100 g/m², of subheading No. 5513.41, for use in the manufacture of sleeping bags. It did not recommend that tariff relief be granted on woven fabrics, solely of nylon filament yarn, dyed, plain weave, of a weight not exceeding 70 g/m², of subheading No. 5407.42, for use in the manufacture of sleeping bags or sleeping bag carrying sacks of the same material.

The Tribunal noted that Consoltex Inc. and Doubletex Inc. are producers of woven fabrics of nylon and that both companies have produced and sold nylon fabrics to a number of Canadian manufacturers of sleeping bags and still count, among their customers, some of the largest domestic producers of sleeping bags. This is clear evidence that the domestic textile industry has the ability to supply nylon fabrics for the production of sleeping bags and sleeping bag carrying sacks.

With regard to the issue of net economic impact, the Tribunal saw no cost as a result of the tariff relief on polyester-cotton fabrics requested by Beco Industries Ltd. (Beco). On the basis of the information available to the Tribunal, tariff relief would provide yearly benefits to Beco in the form of reduced input costs of over \$50,000. As for Beco's request for retroactive tariff relief, the Tribunal stated, in previous cases, that it will not consider recommending such relief other than in exceptional circumstances. Beco provided no evidence to warrant such a recommendation.

TABLE 1**Disposition of Requests for Tariff Relief Between April 1, 2001, and March 31, 2002**

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-2000-005	Peerless Clothing Inc.	Fabric	October 1, 2001	Indeterminate tariff relief
TR-2000-006	Doubletex	Fabric	In progress	
TR-2000-007	Scapa Tapes North America Ltd.	Fabric	September 13, 2001	Indeterminate tariff relief
TR-2000-008	Scapa Tapes North America Ltd.	Fabric	September 13, 2001	Indeterminate tariff relief
TR-2001-001	Gibson Textile Dyers Ltd.	Fabric	In progress	
TR-2001-002	Beco Industries Ltd.	Fabric	March 20, 2002	Indeterminate tariff relief for certain polyester-cotton fabrics; no tariff relief for certain nylon fabrics

TABLE 2

Tariff Relief Recommendations in Place

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-94-001		Canatex Industries (Division of Richelieu Knitting Inc.)	5402.41.12	Indeterminate
TR-94-004		Woods Canada Limited	5208.52.10	Indeterminate
TR-94-010		Palliser Furniture Ltd.	5806.20.10	Indeterminate
TR-94-012		Peerless Clothing Inc.	5309.29.20	Indeterminate
TR-94-013 and TR-94-016		MVG Apparel Corp.	5208.42.20 5208.43.20 5208.49.20 5513.31.10 5513.32.10 5513.33.10	Indeterminate
TR-94-017 and TR-94-018		Elite Counter & Supplies	9943.00.00	Indeterminate
TR-95-003		Landes Canada Inc.	5603.11.20 5603.12.20 5603.13.20 5603.14.20 5603.91.20 5603.92.20 5603.93.20 5603.94.20	Indeterminate
TR-95-004		Lingerie Bright Sleepwear (1991) Inc.	5208.12.20 5208.52.20	Indeterminate
TR-95-005		Lingerie Bright Sleepwear (1991) Inc.	5513.11.10 5513.41.10	Indeterminate
TR-95-009		Peerless Clothing Inc.	5408.21.10 5408.21.20 5408.22.21 5408.22.30	Indeterminate
TR-95-010 and TR-95-034		Freed & Freed International Ltd. and Fen-nelli Fashions Inc.	5111.19.10 5111.19.20	Indeterminate
TR-95-011		Louben Sportswear Inc.	5408.31.10 5408.32.20	Indeterminate
TR-95-012		Perfect Dyeing Canada Inc.	5509.32.10	Indeterminate

Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-95-013A		Doubletex	5208.11.30 5208.12.40 5208.13.20 5208.19.30 5208.21.40 5208.22.20 5208.23.10 5208.29.20 5209.11.30 5209.12.20 5209.19.30 5209.21.20 5209.22.10 5209.29.20	Indeterminate
TR-95-036		Canadian Mill Supply Co. Ltd.	5208.21.20	Indeterminate
TR-95-037		Paris Star Knitting Mills Inc.	5408.24.11 5408.24.91 5408.34.10 5516.14.10 5516.24.10	Indeterminate
TR-95-051		Camp Mate Limited	5407.41.10 5407.42.10 5407.42.20 5903.20.22	Indeterminate
TR-95-053 and TR-95-059		Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	5802.11.10 5802.19.10 5802.19.20	Indeterminate
TR-95-056		Sealy Canada Ltd.	3921.19.10 5407.69.10 5407.73.10 5407.94.10 5516.23.10 5903.90.21 6002.43.20	Indeterminate
TR-95-057 and TR-95-058		Doubletex	5407.51.10 5407.61.92 5407.69.10 5515.11.10 5516.21.10 5516.91.10	Indeterminate
TR-95-060		Triple M Fiberglass Mfg. Ltd.	7019.59.10	Indeterminate
TR-95-061		Camp Mate Limited	6002.43.30	Indeterminate
TR-95-064 and TR-95-065		Lady Americana Sleep Products Inc. and el ran Furniture Ltd.	6002.43.60	Indeterminate

Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-96-003		Venture III Industries Inc.	5407.61.92	Indeterminate
TR-96-004		Acton International Inc.	5906.99.21	Indeterminate
TR-96-006		Alpine Joe Sportswear Ltd.	P.C. 1998-1118	Six years
TR-96-008 and TR-96-010 to TR-96-013		Les Collections Shan Inc.	P.C. 1997-1668	Five years
TR-97-001		Jones Apparel Group Canada Inc.	5407.91.10 5407.92.20 5407.93.10 5408.21.30 5408.22.40 5408.23.20 5408.31.30 5408.32.40 5408.33.10	Indeterminate
TR-97-002 and TR-97-003		Universal Manufacturing Inc.	5208.43.30 5513.41.20	Indeterminate
TR-97-006		Peerless Clothing Inc.	5407.51.30 5903.90.22 5903.90.23 5903.90.24 6002.43.40 6002.43.50	Indeterminate
TR-97-004, TR-97-007, TR-97-008 and TR-97-010		Blue Bird Dress of Toronto Ltd.	5407.51.20 5407.52.20 5407.61.94 5407.69.20	Indeterminate
TR-97-011		Australian Outback Collection (Canada) Ltd.	5209.31.20 5907.00.16	Indeterminate
TR-97-012		Ballin Inc.	5407.93.30 5516.23.20	Indeterminate
TR-97-014		Lenrod Industries Ltd.	5603.93.40	Indeterminate
TR-97-015, TR-97-016 and TR-97-020		Helly Hansen Canada Ltd.	5903.20.24	Indeterminate
TR-98-001		Cambridge Industries	5608.19.20	Indeterminate
TR-98-002		Distex Inc.	6002.92.20	Indeterminate

Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-98-004, TR-98-005 and TR-98-006		Ladcal Investments Ltd., O/A Pintar Manufacturing Nour Trading House and T.S. Simms and Company Limited	5806.10.20	Indeterminate
TR-98-007		Caulfeild Apparel Group Ltd.	5208.43.30	Indeterminate
TR-98-016		Peerless Clothing Inc.	5407.93.20	Indeterminate
TR-98-017		Jones Apparel Group Canada Inc.	5408.32.50 5408.33.20 5408.34.20	Indeterminate
TR-98-019		Tribal Sportswear Inc.	5209.12.30 5209.22.20 5209.32.10	Indeterminate
TR-99-002		Albany International Canada Inc.	5404.10.20	Indeterminate
TR-99-003/003A		Western Glove Works Ltd.	5209.31.30 5209.32.30	Indeterminate
TR-99-004		Peerless Clothing Inc.	5112.11.20 5112.11.30 5112.19.20 5112.19.30	Indeterminate
TR-99-005		Distex Inc.	6002.92.30	Indeterminate
TR-99-006		Coloridé Inc.	5402.41.15	Indeterminate
TR-99-008		JMJ Fashions Inc.	5407.61.20	Indeterminate
TR-2000-001		Peerless Clothing Inc.	5408.22.22	Indeterminate
TR-2000-002		Majestic Industries (Canada) Ltd.	5802.19.30	Indeterminate
TR-2000-003		Tantalum Mining Corporation of Canada Limited	5911.40.10	Indeterminate
TR-2000-004		Ballin Inc.	5516.23.30 5516.93.20	Indeterminate
TR-2000-005		Peerless Clothing Inc.	5112.11.40 5112.19.40	Indeterminate
TR-2000-007 and TR-2000-008		Scapa Tapes North America Ltd.	5208.21.50 5208.31.20	Indeterminate
TA-98-001	TE-97-004 (TR-95-009)	Certain dyed woven fabrics of rayon and polyester	5408.31.20 5408.32.30	Indeterminate
TA-98-002	TE-97-003 (TR-94-009)	Vinex FR-9B fabric	5512.99.10	Indeterminate

Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TA-98-003	TE-98-001 (TR-95-014)	Woven cut warp pile fabrics	5801.35.10	Indeterminate
TA-98-004	TE-98-002 (TR-94-002 and TR-94-002A)	Certain ring-spun yarns	5205.14.20 5205.15.20 5205.24.20 5205.26.20 5205.27.20 5205.28.20 5205.35.20 5205.46.20 5205.47.20 5205.48.20 5206.14.10 5206.15.10 5206.24.10 5206.25.10 5509.53.10 5509.53.20 5509.53.30 5509.53.40	Three years

CHAPTER VI

PROCUREMENT REVIEW

Introduction

Suppliers may challenge federal government procurement decisions that they believe have not been made in accordance with the requirements of the following agreements: Chapter Ten of NAFTA, Chapter Five of the AIT, the AGP, or the *Canada-Korea Agreement on the Procurement of Telecommunications Equipment*. The bid challenge portions of these agreements came into force on January 1, 1994, July 1, 1995, January 1, 1996, and September 1, 2001, respectively.

Any potential suppliers who believe that they may have been unfairly treated during the solicitation or evaluation of bids, or in the awarding of contracts on a designated procurement, may lodge a formal complaint with the Tribunal. A potential supplier with an objection is encouraged to resolve the issue first with the government institution responsible for the procurement. When this process is not successful or a supplier wants to deal directly with the Tribunal, the complainant may ask the Tribunal to consider the case by filing a complaint within the prescribed time limit.

When the Tribunal receives a complaint, it reviews the submission against the criteria for filing. If there are deficiencies, the complainant is given an opportunity to correct these within a specified time limit. If the Tribunal decides to conduct an inquiry, the government institution and all other interested parties are sent a formal notification of the complaint. An official notice of the complaint is also published on MERX and in the *Canada Gazette*. If the contract in question has not been awarded, the Tribunal may order the government institution to postpone awarding any contract pending the disposition of the complaint by the Tribunal, unless the government institution certifies that the procurement is urgent or that the delay would be contrary to the public interest.

After receipt of its copy of the complaint, the government institution responsible for the procurement files a Government Institution Report (GIR) responding to the allegations. The complainant and any intervener are then sent a copy of the GIR and have seven days to submit comments. These are forwarded to the government institution and parties to the inquiry.

Copies of any other submissions or reports prepared for the inquiry are also circulated to the parties for their comments. Once this phase of the inquiry is completed, the Tribunal reviews the information collected and decides whether a hearing should be held.

The Tribunal then determines whether the complaint is valid. If the complaint is found to be valid, the Tribunal may make recommendations to the government institution (such as retendering, re-evaluating or providing compensation) and award reasonable costs to a prevailing complainant for preparing and proceeding with the bid challenge and/or costs for preparing the bid. The government institution, as well as all other parties and interested persons, is notified of the Tribunal's decision. Recommendations made by the Tribunal in its determination are, by statute, to be implemented to the greatest extent possible.

Summary of Procurement Review Activities

	2000-2001	2001-2002
NUMBER OF COMPLAINTS		
Carried over from previous fiscal year	9	22
Received in fiscal year	78	77
TOTAL	87	99
CASES RESOLVED BY THE PARTIES		
Withdrawn or Resolved by the Parties	5	11
Abandoned While Filing	1	-
Subtotal	6	11
INQUIRIES NOT INITIATED OR CONTINUED ON PROCEDURAL GROUNDS		
Lack of Jurisdiction	6	8
Late or Improper Filing	8	12
No Valid Basis/No Reasonable indication of a breach/Premature	17	16
Dismissed	-	3
Subtotal	31	39
CASES DETERMINED ON MERIT		
Complaint Not Valid	15	9
Complaint Valid or Valid in Part	13	23
Subtotal	28	32
OUTSTANDING AT END OF FISCAL YEAR	22	17

Summary of Selected Determinations

During the fiscal year, the Tribunal issued 32 written determinations of its findings and recommendations, which related to 32 procurement complaints. In 23 of the 32 written determinations, the complaints were determined to be valid or valid in part. Seventeen cases were in progress at year end. Table 1 at the end of this chapter summarizes these activities.

Of the cases heard by the Tribunal in carrying out its procurement review functions, certain decisions stand out because of the legal significance of the cases. Brief summaries of a representative sample of such cases have been prepared for general information purposes only and have no legal status.

***Polaris Inflatable
Boats (Canada) Ltd.***

*PR-2000-044
and PR-2000-049
to PR-2000-053*

*Determination:
Five complaints valid in
part/One complaint
dismissed
(May 14, 2001)*

The Tribunal made a determination with respect to six complaints filed by Polaris Inflatable Boats (Canada) Ltd. (Polaris) concerning six solicitations of the offices of the Pacific, Ontario, Quebec and Atlantic Regions of the Department of Public Works and Government Services (PWGSC). These solicitations were for the supply of six- and seven-metre rigid hull inflatable boats (RHIBs) for the Department of Fisheries and Oceans (DFO) and its constituent, the Canadian Coast Guard. Together, these solicitations were for the supply of 12 RHIBs in fiscal year 2000-2001 and up to 29 additional RHIBs during the following two fiscal years.

Polaris alleged that, by issuing so many solicitations concurrently and by not allowing sufficient time for bid formulation and delivery of the RHIBs, PWGSC and the DFO structured the above-noted solicitations so as to avoid competition and benefit a single supplier, Zodiac Hurricane Technologies Inc. It also made a number of allegations with respect to each of the above-mentioned solicitations.

As a remedy, Polaris requested that PWGSC consult with qualified suppliers to establish acceptable time frames for solicitation responses and for the construction and delivery of the RHIBs. It also requested that PWGSC limit the current contracts to the supply of those vessels that were needed at that time and reissue fair solicitations allowing for realistic response and construction times for any remaining RHIBs required.

Having examined the evidence presented by the parties and considered the provisions of NAFTA and the AIT, the Tribunal determined that five solicitations were not conducted in accordance with the provisions of the applicable trade agreements and that the complaints in relation thereto were, therefore, valid in part. The remaining solicitation had been cancelled by PWGSC and was no longer at issue. Therefore, the complaint would not be decided on the merits of the case.

FM One Alliance Corp.

PR-2000-063

*Determination:
Complaint valid
(June 27, 2001)*

The Tribunal made a determination with respect to a complaint filed by FM One Alliance Corp. (FM One) concerning the cancellation by Canada Post Corporation (CPC) of a Request for Proposal (RFP) for the provision of facility management services, the proposed renewal of a Property Management Agreement with Brookfield LePage Johnson Controls Facility Management Services (BLJC) and the proposed renewal of a Property Management Agreement with Profac Facilities Management Services Inc. (Profac).

FM One alleged that, contrary to Article 1001(4) of NAFTA, the proposed “renewals” had been structured to avoid the obligations of Chapter Ten of NAFTA. It also alleged that, contrary to Articles 1008(2)(a) and (b) of NAFTA, CPC’s actions leading to the proposed procurements failed to provide all suppliers equal access to information with respect to the procurements during the period prior to the issuance of any notice or tender documentation. Furthermore, FM One alleged that CPC had failed to publish an invitation to participate in the proposed procurements, thus violating the provisions of Article 1010 of NAFTA. In addition, it alleged that CPC had engaged in unjustified limited tendering procedures, contrary to the provisions of Article 1016 of NAFTA. Finally, FM One alleged that, in structuring these procurements, CPC had breached the provisions of Article 1015(4)(e) of NAFTA, which requires that option clauses not be used in a manner that circumvents Chapter Ten of NAFTA.

As a remedy, FM One requested that CPC be ordered to postpone the award of the proposed contract renewals to BLJC and ProFac until the Tribunal determined the validity of the complaint. In addition, FM One requested that the Tribunal order CPC to amend the RFP to make it compliant with NAFTA and previous Tribunal determinations and that CPC continue the bidding process with the qualified bidders or issue a new solicitation compliant with NAFTA for the designated contracts. In the alternative, FM One requested compensation for the profit that it had lost as a result of the defective procurements. It also requested compensation for its costs in preparing a response to the RFP and all activities in relation thereto and for the costs of the complaint.

Having examined the evidence presented by the parties and considered the provisions of NAFTA, the Tribunal determined that the procurement was not conducted in accordance with the provisions of NAFTA and that the complaint was therefore valid. It recommended that CPC not proceed with the proposed service agreement renewals and that, instead, a solicitation be issued for the property management services therein. The procurement process for those services was to be completed within six months and conducted in compliance with NAFTA. The Tribunal awarded FM One the reasonable costs that it had incurred in preparing and proceeding with the complaint.

**COGNOS
Incorporated**

PR-2001-036

*Determination:
Complaint valid
(February 20, 2002)*

The Tribunal made a determination with respect to a complaint filed by COGNOS Incorporated (COGNOS) concerning a solicitation of PWGSC, on behalf of the Department of Justice, for a balanced scorecard management information system adapted to the Department of Justice and an on-line analytical processing system, including licences, ongoing software support and user training.

COGNOS alleged that the solicitation included restrictive technical specifications and a time frame for the submission of proposals that had the effect of discriminating in favour of a competitor's product.

Having examined the evidence presented by the parties and considered the provisions of the AIT, NAFTA and the AGP, the Tribunal determined that the complaint was valid in part and recommended that PWGSC issue a new solicitation. The Tribunal further awarded COGNOS its reasonable complaint costs.

**Hewlett-Packard
(Canada) Ltd.**

*PR-2001-030
and PR-2001-040*

*Determination:
Complaints valid
(February 21, 2002)*

The Tribunal made a determination with respect to two complaints filed by Hewlett-Packard (Canada) Ltd. (Hewlett-Packard) concerning a procurement of PWGSC, on behalf of the Department of Human Resources Development (HRDC), for the development and implementation of a consolidation plan for UNIX services and the establishment of a means of acquiring services (including professional services), equipment and software, as and when required.

Hewlett-Packard alleged that PWGSC improperly evaluated a submission from another bidder as being compliant. It also alleged that PWGSC improperly destroyed documents relating to the evaluation of proposals, contrary to the provisions of NAFTA.

Having examined the evidence presented by the parties and considered the provisions of the AIT and NAFTA, the Tribunal determined that the complaints were valid. It concluded that the bids were not correctly evaluated and recommended that the existing contract be terminated and that PWGSC and HRDC issue a new solicitation. Further, the Tribunal found that PWGSC and HRDC breached the provisions of NAFTA by destroying the evaluators' worksheets and recommended that PWGSC establish procedures designed to ensure that complete documentation be maintained for each procurement. The Tribunal awarded Hewlett-Packard its reasonable costs.

**Judicial Review of
Procurement
Decisions**

Table 2 lists the procurement decisions that were appealed to or decided by the Federal Court of Canada during the fiscal year.

TABLE 1**Disposition of Procurement Complaints Between April 1, 2001, and March 31, 2002**

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-2000-018R	X-Wave Solutions Inc.	June 28, 2000	Remitted back to Tribunal
PR-2000-042	Spallumcheen Band	December 13, 2000	Decision rendered on April 26, 2001 Complaint not valid
PR-2000-044	Polaris Inflatable Boats (Canada) Ltd.	December 15, 2000	Decision rendered on May 14, 2001 Complaint valid in part
PR-2000-049	Polaris Inflatable Boats (Canada) Ltd.	December 15, 2000	Decision rendered on May 14, 2001 Complaint valid in part
PR-2000-050	Polaris Inflatable Boats (Canada) Ltd.	December 15, 2000	Decision rendered on May 14, 2001 Complaint valid in part
PR-2000-051	Polaris Inflatable Boats (Canada) Ltd.	December 15, 2000	Decision rendered on May 14, 2001 Complaint valid in part
PR-2000-052	Polaris Inflatable Boats (Canada) Ltd.	December 15, 2000	Decision rendered on May 14, 2001 Complaint valid in part
PR-2000-053	Polaris Inflatable Boats (Canada) Ltd.	January 4, 2001	Decision rendered on May 14, 2001 Complaint valid in part
PR-2000-059	P&L Communications Inc.	February 8, 2001	Decision rendered on May 30, 2001 Complaint valid
PR-2000-060	Foundry Networks Inc.	February 8, 2001	Decision rendered on May 23, 2001 Complaint valid
PR-2000-063	FM One Alliance Corp.	February 12, 2001	Decision rendered on June 27, 2001 Complaint valid
PR-2000-064	Wescam Inc.	February 12, 2001	Decision rendered on May 7, 2001 Complaint valid
PR-2000-065	Cifelli Systems Corporation	February 16, 2001	Decision rendered on June 21, 2001 Complaint valid
PR-2000-067	Foundry Networks Inc.	February 19, 2001	Decision rendered on June 4, 2001 Complaint not valid
PR-2000-068	Cifelli Systems Corporation	March 1, 2001	Complaint withdrawn
PR-2000-071	TAB Canada	March 5, 2001	Decision rendered on July 18, 2001 Complaint valid in part
PR-2000-072	The Baxter Group Inc.	March 7, 2001	Complaint withdrawn
PR-2000-073	P&L Communications Inc.	March 14, 2001	Decision rendered on July 24, 2001 Complaint valid in part
PR-2000-074	M.D. Charlton Co. Ltd.	March 16, 2001	Complaint withdrawn
PR-2000-075	M.D. Charlton Co. Ltd.	March 16, 2001	Complaint withdrawn
PR-2000-077	Volvo Motor Graders Ltd.	March 23, 2001	Decision rendered on August 1, 2001 Complaint valid

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-2000-078	Eurodata Support Services Inc.	March 29, 2001	Decision rendered on July 30, 2001 Complaint not valid
PR-2001-001	Light Tree Technologies, Inc.	April 10, 2001	Complaint withdrawn
PR-2001-002	Light Tree Technologies, Inc.	April 10, 2001	Complaint withdrawn
PR-2001-003	Light Tree Technologies, Inc.	April 10, 2001	Complaint withdrawn
PR-2001-004	OdySoft	April 9, 2001	Not accepted for inquiry, no reasonable indication of a breach
PR-2001-005	Light Tree Technologies, Inc.	April 10, 2001	Not accepted for inquiry, no complaint received
PR-2001-006	Diversicomm Data Systems Inc.	April 19, 2001	Decision rendered on August 30, 2001 Complaint not valid
PR-2001-007	Bell Nexxia	April 6, 2001	Not accepted for inquiry, no reasonable indication of a breach
PR-2001-008	Foundry Networks Inc.	April 17, 2001	Decisions rendered on August 30, 2001 Complaint not valid
PR-2001-009	Foundry Networks Inc.	April 17, 2001	Complaint dismissed, late filing
PR-2001-010	D'Arcy Moving & Storage	May 14, 2001	Not accepted for inquiry, no reasonable indication of a breach
PR-2001-011	COGNOS Incorporated	May 15, 2001	Not accepted for inquiry, premature complaint
PR-2001-012	Foundry Networks Inc.	May 16, 2001	Not accepted for inquiry, no reasonable indication of a breach
PR-2001-013	Lockheed Canada	May 25, 2001	Not accepted for inquiry, premature complaint
PR-2001-014	Fjord Tech Industries Inc.	May 30, 2001	Not accepted for inquiry, late filing
PR-2001-015	Resource Futures International	May 30, 2001	Not accepted for inquiry, late filing
PR-2001-016	G.J. Cahill and Company (1979) Limited	May 31, 2001	Not accepted for inquiry, not a designated contract
PR-2001-017	COGNOS Incorporated	July 6, 2001	Not accepted for inquiry, late filing
PR-2001-018	Corel Corporation	July 18, 2001	Complaint withdrawn
PR-2001-019	Marathon Management Company	July 19, 2001	Complaint dismissed, does not relate to a designated contract
PR-2001-020	Ajilon Canada	July 16, 2001	Not accepted for inquiry, no reasonable indication of a breach
PR-2001-021	Marathon Management Company	July 23, 2001	Complaint withdrawn
PR-2001-022	Corporate Express	July 20, 2001	Not accepted for inquiry, no jurisdiction

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-2001-023	Bell Nexxia	August 8, 2001	Decision rendered on October 25, 2001 Complaint not valid
PR-2001-024	Astaris	August 7, 2001	Not accepted for inquiry, no reasonable indication of a breach
PR-2001-025	Empowered Networks Inc.	August 23, 2001	Decision rendered on December 27, 2001 Complaint not valid
PR-2001-026	McNally Construction Inc.	September 17, 2001	Decision rendered on December 6, 2001 Complaint valid in part
PR-2001-027	PTI Services	September 28, 2001	Decision rendered on November 28, 2001 Complaint valid
PR-2001-028	Compugen	September 21, 2001	Not accepted for inquiry, late filing
PR-2001-029	John Chandioux experts-conseils inc.	October 1, 2001	Decision rendered on February 19, 2002 Complaint valid in part
PR-2001-030	Hewlett-Packard (Canada) Ltd.	October 9, 2001	Decision rendered on February 21, 2002 Complaint valid
PR-2001-031	C.F. Industrial Products Inc.	October 11, 2001	Decision rendered on January 9, 2002 Complaint not valid
PR-2001-032	John Chandioux experts-conseils inc.	October 17, 2001	Decision rendered on February 19, 2002 Complaint valid in part
PR-2001-033	Marathon Management Company	October 11, 2001	Complaint withdrawn
PR-2001-034	Diversicomm Data Systems	October 24, 2001	Decision rendered on January 22, 2002 Complaint not valid
PR-2001-035	Preston Phipps Inc.	October 25, 2001	Decision rendered on January 23, 2002 Complaint valid in part
PR-2001-036	COGNOS Incorporated	October 26, 2001	Decision rendered on February 20, 2002 Complaint valid
PR-2001-037	Foundry Networks Inc.	October 26, 2001	Not accepted for inquiry, no reasonable indication of a breach
PR-2001-038	Papp Plastics & Distributing Ltd.	October 31, 2001	Decision rendered on January 31, 2002 Complaint valid in part
PR-2001-039	Cifelli Systems Corporation	November 5, 2001	Not accepted for inquiry, not a potential supplier
PR-2001-040	Hewlett-Packard (Canada) Ltd.	November 15, 2001	Decision rendered on February 21, 2002 Complaint valid
PR-2001-041	Fleetway Inc.	November 29, 2001	Not accepted for inquiry, late filing
PR-2001-042	Seatech Ltd.	November 28, 2001	Not accepted for inquiry, late filing
PR-2001-043	Fleetway Inc.	November 28, 2001	Not accepted for inquiry, not a designated contract

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-2001-044	InBusiness Systems Inc.	December 5, 2001	Not accepted for inquiry, complaint premature
PR-2001-045	Transpolar Technology Corporation	December 6, 2001	Not accepted for inquiry, not a designated contract
PR-2001-046	Educom TS Inc.	December 6, 2001	Complaint withdrawn
PR-2001-047	Foundry Networks Inc.	December 12, 2001	Not accepted for inquiry, late filing
PR-2001-048	Foundry Networks Inc.	December 12, 2001	Decision rendered on March 12, 2002 Complaint valid
PR-2001-049	Aviva Solutions Inc.	December 13, 2001	Accepted for inquiry
PR-2001-050	Papp Plastics & Distributing Ltd.	December 14, 2001	Not accepted for inquiry, late filing
PR-2001-051	DRS Technologies Inc.	December 18, 2001	Accepted for inquiry
PR-2001-052	CMC Electronics Inc.	December 18, 2001	Accepted for inquiry
PR-2001-053	Fritz Starber Inc.	December 19, 2001	Not accepted for inquiry, not a designated contract
PR-2001-054	Foundry Networks Inc.	December 31, 2001	Not accepted for inquiry, no reasonable indication of a breach
PR-2001-055	Foundry Networks Inc.	January 3, 2002	Not accepted for inquiry, late filing
PR-2001-056	ACMG Management Inc.	January 25, 2002	Accepted for inquiry
PR-2001-057	Georgian College of Applied Arts and Technology	January 23, 2002	Not accepted for inquiry, complaint premature
PR-2001-058	Installation Globale Normand Morin & Fils Inc.	February 1, 2002	Not accepted for inquiry, late filing
PR-2001-059	MaxSys Professionals & Solutions Inc.	February 14, 2002	Accepted for inquiry
PR-2001-060	Corel Corporation	February 15, 2002	Accepted for inquiry
PR-2001-061	Foundry Networks Inc.	February 15, 2002	Accepted for inquiry
PR-2001-062	Foundry Networks Inc.	February 22, 2002	Accepted for inquiry
PR-2001-063	Service Star Building Cleaning Inc.	February 26, 2002	Accepted for inquiry
PR-2001-064	Amdahl Canada Limited	February 25, 2002	Not accepted for inquiry, no reasonable indication of a breach
PR-2001-065	BASE Controls Limited	February 26, 2002	Not accepted for inquiry, late filing
PR-2001-066	Papp Plastics & Distributing Ltd.	March 5, 2002	Accepted for inquiry
PR-2001-067	Georgian College of Applied Arts and Technology	March 6, 2002	Accepted for inquiry
PR-2001-068	Bennett Environmental Inc.	March 12, 2002	Accepted for inquiry

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-2002-069	Macadamian Technologies Inc.	March 1, 2002	Accepted for inquiry
PR-2001-070	The Whitewind Company, Inc.	March 6, 2002	Not accepted for inquiry, no jurisdiction
PR-2001-071	Équipement Industriel Champion Inc.	March 15, 2002	Accepted for inquiry
PR-2001-072	MIL Systems	March 8, 2002	Not accepted for inquiry, no jurisdiction
PR-2001-073	Hike Metal Products Ltd.	March 12, 2002	Not accepted for inquiry, no reasonable indication of a breach
PR-2001-074	GMA Cover Corp.	March 26, 2002	Accepted for inquiry
PR-2001-075	Cleeve Technology Incorporated	March 19, 2002	Not accepted for inquiry, late filing
PR-2001-076	DASCO Equipment Inc.	March 21, 2002	Not accepted for inquiry, no reasonable indication of a breach
PR-2001-077	FLIR Systems Ltd.	March 27, 2002	Being filed

TABLE 2

Procurement Cases Before the Federal Court of Canada Between April 1, 2001, and March 31, 2002

File No.	Complainant	Applicant	File No./Status
PR-99-051	Ace/Clear Defense Inc.	National Gallery of Canada	A—481—00 Application dismissed
PR-2000-018	X-Wave Solutions Inc.	X-Wave Solutions Inc.	A—668—00 Application allowed in part
PR-2000-017 and PR-2000-035	Telus Integrated Communications Inc.	Bell Nexxia Inc.	A—747—00 Application allowed
PR-2000-019	Telus Integrated Communications Inc.	Telus Integrated Communications Inc.	T—1297—00 Application dismissed
PR-2000-039	Seimens Westinghouse Inc.	Seimens Westinghouse Inc.	A—203—01 Application dismissed
PR-2000-044 and PR-2000-049 to PR-2000-053	Polaris Inflatable Boats (Canada) Ltd.	Attorney General of Canada	A—358—01 Application allowed
PR-2000-063	FM One Alliance Corp.	Profac Facilities Management Services Inc.	A—436—01 and A—444—01 Applications dismissed
PR-2000-063	FM One Alliance Corp.	FM One Alliance Corp.	T—1563—01
PR-2001-007	BCE Nexxia Inc.	BCE Nexxia Inc.	A—287—01 Application dismissed
PR-2001-026	McNally Construction Inc.	Attorney General of Canada	A—007—02
PR-2001-029	John Chandioux experts-conseils inc.	John Chandioux experts-conseils inc.	A—050—029
PR-2001-030 and PR-2001-040	Hewlett-Packard (Canada) Ltd.	IBM Canada Ltd.	A—172—02 Discontinued
PR-2001-030 and PR-2001-040	Hewlett-Packard (Canada) Ltd.	IBM Canada Ltd.	A—173—02
PR-2001-030 and PR-2001-040	Hewlett-Packard (Canada) Ltd.	Attorney General of Canada	A—178—02
PR-2001-053	Fritz Starber Inc.	Fritz Starber Inc.	A—048—02

TRIBUNAL PUBLICATIONS ISSUED DURING THE FISCAL YEAR

May 2001	Annual Report for the Fiscal Year Ending March 31, 2001
June 2001	Bulletin - Vol. 13 No. 1* Procurement Compensation Guidelines - Revised*
September 2001	Bulletin - Vol. 13 No. 2* Information Package: Filing a Procurement Complaint* Practice Notice: Government Procurement - Complaints by Potential Suppliers - CITT Inquiries
December 2001	Bulletin - Vol. 13 No. 3*
January 2002	Textile Reference: Annual Status Report - October 1, 2000, to September 30, 2001
March 2002	Bulletin - Vol. 13 No. 4*

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PUBLICATIONS PRODUITES PAR LE TRIBUNAL PENDANT L'EXERCICE

Mai 2001	Rapport annuel pour l'exercice se terminant le 31 mars 2001
Juin 2001	Bulletin - Vol. 13, n° 1* Lignes directrices sur les indemnités dans une procédure portant sur un marché public - Révisé*
Septembre 2001	Bulletin - Vol. 13, n° 2* Trousse d'information : Compléter une plainte de marché public* Note de procédure : Marchés publics - Plaintes des fournisseurs éventuels - Enquêtes du TCCF
Décembre 2001	Bulletin - Vol. 13, n° 3*
Janvier 2002	Saisine sur les textiles : rapport de situation annuel - 1 ^{er} octobre 2000 au 30 septembre 2001
Mars 2002	Bulletin - Vol. 13, n° 4*

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Causes concernant les marchés publics devant la Cour fédérale du Canada entre le 1^{er} avril 2001 et le 31 mars 2002

TABEAU 2

Dossier n°	Partie plaignante	Demanderesse	Dossier n°/état
PR-99-051	Ace/Clear Defense Inc.	Musée des beaux-arts du Canada	A-481-00 Demande rejetée
PR-2000-018	X-Wave Solutions Inc.	X-Wave Solutions Inc.	A-668-00 Demande admise en partie
PR-2000-017 et PR-2000-035	Telus Integrated Communications Inc.	Bell Nexia Inc.	A-747-00 Demande admise
PR-2000-019	Telus Integrated Communications Inc.	Telus Integrated Communications Inc.	T-1297-00 Demande rejetée
PR-2000-039	Selmens Westinghouse Inc.	Selmens Westinghouse Inc.	A-203-01 Demande rejetée
PR-2000-044 et PR-2000-049 à PR-2000-053	Polars Inflatable Boats (Canada) Ltd.	Procureur général du Canada	A-358-01 Demande admise
PR-2000-063	FM One Alliance Corp.	Profac Facilities Management Services Inc.	A-436-01 et A-444-01 Demandes rejetées
PR-2000-063	FM One Alliance Corp.	FM One Alliance Corp.	T-1563-01
PR-2001-007	BCE Nexia Inc.	BCE Nexia Inc.	A-287-01 Demande rejetée
PR-2001-026	McNally Construction Inc.	Procureur général du Canada	A-007-02
PR-2001-029	John Chandloux experts-conseils inc.	John Chandloux experts-conseils inc.	A-050-029
PR-2001-030 et PR-2001-040	Hewlett-Packard (Canada) Ltée	IBM Canada Ltée	A-172-02 Abandonné
PR-2001-030 et PR-2001-040	Hewlett-Packard (Canada) Ltée	IBM Canada Ltée	A-173-02
PR-2001-030 et PR-2001-040	Hewlett-Packard (Canada) Ltée	Procureur général du Canada	A-178-02
PR-2001-053	Fritz Starber Inc.	Fritz Starber Inc.	A-048-02

Règlement des plaintes concernant les marchés publics (suite)

Dossier n°	Partie plaignante	Date de réception de la plainte	Etat/décision
PR-2001-065	BASE Controls Limited	Le 26 février 2002	Refus d'enquêter, dépôt tardif
PR-2001-066	Papp Plastics & Distributing Ltd.	Le 5 mars 2002	Décision d'enquêter
PR-2001-067	Georgian College of Applied Arts and Technology	Le 6 mars 2002	Décision d'enquêter
PR-2001-068	Bennett Environmental Inc.	Le 12 mars 2002	Décision d'enquêter
PR-2002-069	Macadamian Technologies Inc.	Le 1 ^{er} mars 2002	Décision d'enquêter
PR-2001-070	The Whitewind Company, Inc.	Le 6 mars 2002	Refus d'enquêter, aucune compétence
PR-2001-071	Equipement Industriel Champion Inc.	Le 15 mars 2002	Décision d'enquêter
PR-2001-072	MIL Systems	Le 8 mars 2002	Refus d'enquêter, aucune compétence
PR-2001-073	Hike Metal Products Ltd.	Le 12 mars 2002	Refus d'enquêter, aucune indication d'une infraction
PR-2001-074	GMA Cover Corp.	Le 26 mars 2002	Décision d'enquêter
PR-2001-075	Cleeve Technology Incorporated	Le 19 mars 2002	Refus d'enquêter, dépôt tardif
PR-2001-076	DASCO Equipment Inc.	Le 21 mars 2002	Refus d'enquêter, aucune indication d'une infraction
PR-2001-077	FLIR Systems Ltd.	Le 27 mars 2002	En cours de dépôt

Règlement des plaintes concernant les marchés publics (suite)

Dossier n°	Partie plaignante	Date de réception de la plainte	État/décision
PR-2001-040	Hewlett-Packard (Canada) Ltée	Le 15 novembre 2001	Décision rendue le 21 février 2002 Plainte fondée Refus d'enquêter, dépôt tardif Le 29 novembre 2001 Fleetway Inc.
PR-2001-041	Fleetway Inc.	Le 29 novembre 2001	Refus d'enquêter, dépôt tardif
PR-2001-042	Seatech Ltd.	Le 28 novembre 2001	Refus d'enquêter, dépôt tardif
PR-2001-043	Fleetway Inc.	Le 28 novembre 2001	Refus d'enquêter, pas un contrat spécifique
PR-2001-044	InBusiness Systems Inc.	Le 5 décembre 2001	Refus d'enquêter, plainte prématurée Refus d'enquêter, pas un contrat spécifique
PR-2001-045	Transpolar Technology Corporation	Le 6 décembre 2001	Refus d'enquêter, pas un contrat spécifique
PR-2001-046	Educom TS Inc.	Le 6 décembre 2001	Plainte retirée Refus d'enquêter, dépôt tardif Le 12 décembre 2001
PR-2001-048	Foundry Networks Inc.	Le 12 décembre 2001	Décision rendue le 12 mars 2002 Plainte fondée
PR-2001-049	Avaya Solutions Inc.	Le 13 décembre 2001	Décision d'enquêter Le 14 décembre 2001
PR-2001-050	Papp Plastics & Distributing Ltd.	Le 14 décembre 2001	Refus d'enquêter, dépôt tardif
PR-2001-051	DRS Technologies Inc.	Le 18 décembre 2001	Décision d'enquêter
PR-2001-052	CMC Electronics Inc.	Le 18 décembre 2001	Décision d'enquêter
PR-2001-053	Fritz Starber Inc.	Le 19 décembre 2001	Refus d'enquêter, pas un contrat spécifique
PR-2001-054	Foundry Networks Inc.	Le 31 décembre 2001	Refus d'enquêter, aucune indication d'une infraction
PR-2001-055	Foundry Networks Inc.	Le 3 janvier 2002	Refus d'enquêter, dépôt tardif
PR-2001-056	ACMG Management Inc.	Le 25 janvier 2002	Décision d'enquêter
PR-2001-057	Georgian College of Applied Arts and Technology	Le 23 janvier 2002	Refus d'enquêter, plainte prématurée
PR-2001-058	Installation Globale Normand Morn & Fils Inc.	Le 1 ^{er} février 2002	Refus d'enquêter, dépôt tardif
PR-2001-059	MaxSys Professionals & Solutions Inc.	Le 14 février 2002	Décision d'enquêter
PR-2001-060	Corel Corporation	Le 15 février 2002	Décision d'enquêter
PR-2001-061	Foundry Networks Inc.	Le 15 février 2002	Décision d'enquêter
PR-2001-062	Foundry Networks Inc.	Le 22 février 2002	Décision d'enquêter
PR-2001-063	Service Star Building Cleaning Inc.	Le 26 février 2002	Décision d'enquêter
PR-2001-064	Amдахl Canada Limited	Le 25 février 2002	Refus d'enquêter, aucune indication d'une infraction

Règlement des plaintes concernant les marchés publics (suite)

Dossier n°	Partie plaignante	Date de réception de la plainte	État/décision
PR-2001-020	Ajilon Canada	Le 16 juillet 2001	Refus d'enquêter, aucune indication d'une infraction
PR-2001-021	Marathon Management Company	Le 23 juillet 2001	Plainte retirée
PR-2001-022	Corporate Express	Le 20 juillet 2001	Refus d'enquêter, aucune compétence
PR-2001-023	Bell Nexia	Le 8 août 2001	Décision rendue le 25 octobre 2001 Plainte non fondée
PR-2001-024	Astans	Le 7 août 2001	Refus d'enquêter, aucune indication d'une infraction
PR-2001-025	Empowered Networks Inc.	Le 23 août 2001	Décision rendue le 27 décembre 2001 Plainte non fondée
PR-2001-026	McNally Construction Inc.	Le 17 septembre 2001	Décision rendue le 6 décembre 2001 Plainte fondée en partie
PR-2001-027	PTI Services	Le 28 septembre 2001	Décision rendue le 28 novembre 2001 Plainte fondée
PR-2001-028	Compugen	Le 21 septembre 2001	Refus d'enquêter, dépôt tardif
PR-2001-029	John Chandioux experts-conseils inc.	Le 1 ^{er} octobre 2001	Décision rendue le 19 février 2002 Plainte fondée en partie
PR-2001-030	Hewlett-Packard (Canada) Ltée	Le 9 octobre 2001	Décision rendue le 21 février 2002 Plainte fondée
PR-2001-031	C. F. Industrial Products Inc.	Le 11 octobre 2001	Décision rendue le 9 janvier 2002 Plainte non fondée
PR-2001-032	John Chandioux experts-conseils inc.	Le 17 octobre 2001	Décision rendue le 19 février 2002 Plainte fondée en partie
PR-2001-033	Marathon Management Company	Le 11 octobre 2001	Plainte retirée
PR-2001-034	Diversicom Data Systems	Le 24 octobre 2001	Décision rendue le 22 janvier 2002 Plainte non fondée
PR-2001-035	Preston Phipps Inc.	Le 25 octobre 2001	Décision rendue le 23 janvier 2002 Plainte fondée en partie
PR-2001-036	COGNOS Incorporated	Le 26 octobre 2001	Décision rendue le 20 février 2002 Plainte fondée
PR-2001-037	Foundry Networks Inc.	Le 26 octobre 2001	Refus d'enquêter, aucune indication d'une infraction
PR-2001-038	Papp Plastics & Distributing Ltd.	Le 31 octobre 2001	Décision rendue le 31 janvier 2002 Plainte fondée en partie
PR-2001-039	Citell Systems Corporation	Le 5 novembre 2001	Refus d'enquêter, pas un fournisseur potentiel

Règlement des plaintes concernant les marchés publics (suite)

Dossier n°	Partie plaignante	Date de réception de la plainte	État/décision
PR-2000-074	M.D. Charlton Co. Ltd.	Le 16 mars 2001	Plainte retirée
PR-2000-075	M.D. Charlton Co. Ltd.	Le 16 mars 2001	Plainte retirée
PR-2000-077	Volvo Motor Graders Ltd.	Le 23 mars 2001	Décision rendue le 1 ^{er} août 2001
PR-2000-078	Eurodata Support Services Inc.	Le 29 mars 2001	Décision rendue le 30 juillet 2001
PR-2001-001	Light Tree Technologies, Inc.	Le 10 avril 2001	Plainte retirée
PR-2001-002	Light Tree Technologies, Inc.	Le 10 avril 2001	Plainte retirée
PR-2001-003	Light Tree Technologies, Inc.	Le 10 avril 2001	Plainte retirée
PR-2001-004	Odysse	Le 9 avril 2001	Refus d'enquêter, aucune indication d'une infraction
PR-2001-005	Light Tree Technologies, Inc.	Le 10 avril 2001	Refus d'enquêter, pas une plainte
PR-2001-006	Diversicomm Data Systems Inc.	Le 19 avril 2001	Décision rendue le 30 août 2001
PR-2001-007	Bell Nexxia	Le 6 avril 2001	Refus d'enquêter, aucune indication d'une infraction
PR-2001-008	Foundry Networks Inc.	Le 17 avril 2001	Décision rendue le 30 août 2001
PR-2001-009	Foundry Networks Inc.	Le 17 avril 2001	Plainte rejetée, dépôt tardif
PR-2001-010	D'Arcy Moving & Storage	Le 14 mai 2001	Refus d'enquêter, aucune indication d'une infraction
PR-2001-011	COGNOS Incorporated	Le 15 mai 2001	Refus d'enquêter, plainte prématurée
PR-2001-012	Foundry Networks Inc.	Le 16 mai 2001	Refus d'enquêter, aucune indication d'une infraction
PR-2001-013	Lockheed Canada	Le 25 mai 2001	Refus d'enquêter, plainte prématurée
PR-2001-014	Fjord Tech Industries Inc.	Le 30 mai 2001	Refus d'enquêter, dépôt tardif
PR-2001-015	Resource Futures International	Le 30 mai 2001	Refus d'enquêter, dépôt tardif
PR-2001-016	G.J. Cahill and Company (1979) Limited	Le 31 mai 2001	Refus d'enquêter, pas un contrat spécifique
PR-2001-017	COGNOS Incorporated	Le 6 juillet 2001	Refus d'enquêter, dépôt tardif
PR-2001-018	Corel Corporation	Le 18 juillet 2001	Plainte retirée
PR-2001-019	Marathon Management Company	Le 19 juillet 2001	Plainte rejetée, ne vise pas un contrat spécifique

TABLEAU 1

Règlement des plaintes concernant les marchés publics entre le 1^{er} avril 2001 et le 31 mars 2002

Dossier n°	Partie plaignante	Date de réception de la plainte	État/décision
PR-2000-018R	X-Wave Solutions Inc.	Le 28 juin 2000	Renvoyé au Tribunal
PR-2000-042	Bande indienne de Spallumcheen	Le 13 décembre 2000	Décision rendue le 26 avril 2001 Plainte non fondée
PR-2000-044	Polaris Inflatable Boats (Canada) Ltd.	Le 15 décembre 2000	Décision rendue le 14 mai 2001 Plainte fondée en partie
PR-2000-049	Polaris Inflatable Boats (Canada) Ltd.	Le 15 décembre 2000	Décision rendue le 14 mai 2001 Plainte fondée en partie
PR-2000-050	Polaris Inflatable Boats (Canada) Ltd.	Le 15 décembre 2000	Décision rendue le 14 mai 2001 Plainte fondée en partie
PR-2000-051	Polaris Inflatable Boats (Canada) Ltd.	Le 15 décembre 2000	Décision rendue le 14 mai 2001 Plainte fondée en partie
PR-2000-052	Polaris Inflatable Boats (Canada) Ltd.	Le 15 décembre 2000	Décision rendue le 14 mai 2001 Plainte fondée en partie
PR-2000-053	Polaris Inflatable Boats (Canada) Ltd.	Le 4 janvier 2001	Décision rendue le 14 mai 2001 Plainte fondée en partie
PR-2000-059	P&L Communications Inc.	Le 8 février 2001	Décision rendue le 30 mai 2001 Plainte fondée
PR-2000-060	Foundry Networks Inc.	Le 8 février 2001	Décision rendue le 23 mai 2001 Plainte fondée
PR-2000-063	FM One Alliance Corp.	Le 12 février 2001	Décision rendue le 27 juin 2001 Plainte fondée
PR-2000-064	Wescam Inc.	Le 12 février 2001	Décision rendue le 7 mai 2001 Plainte fondée
PR-2000-065	Citefil Systems Corporation	Le 16 février 2001	Décision rendue le 21 juin 2001 Plainte fondée
PR-2000-067	Foundry Networks Inc.	Le 19 février 2001	Décision rendue le 4 juin 2001 Plainte non fondée
PR-2000-068	Citefil Systems Corporation	Le 1 ^{er} mars 2001	Plainte retirée
PR-2000-071	TAB Canada	Le 5 mars 2001	Décision rendue le 18 juillet 2001 Plainte fondée en partie
PR-2000-072	The Baxter Group Inc.	Le 7 mars 2001	Plainte retirée
PR-2000-073	P&L Communications Inc.	Le 14 mars 2001	Décision rendue le 24 juillet 2001 Plainte fondée en partie

Après avoir examiné les éléments de preuve présentés par les parties et tenu compte des dispositions de l'ACI et de l'ALÉNA, le Tribunal a déterminé que les plaintes étaient fondées. Il a conclu que les offres n'avaient pas été évaluées correctement et a recommandé que le contrat existant soit résilié et que TPSSGC et DRHC lancent une nouvelle invitation à soumissionner. En outre, le Tribunal a conclu que TPSSGC et DRHC avaient violé les dispositions de l'ALÉNA lorsqu'ils avaient détruit les feuilles d'évaluation des évaluateurs et a recommandé que TPSSGC développe des procédures conçues afin d'assurer que des documents complets sur les marchés publics soient conservés. Le Tribunal a accordé à Hewlett-Packard le remboursement de ses frais raisonnables.

Le tableau 2 dresse une liste des décisions concernant les marchés publics interjetées en appel devant la Cour fédérale du Canada ou sur lesquelles la Cour a statué au cours de l'exercice.

remboursement des frais qu'elle avait engagés pour la préparation d'une réponse à la DP et toutes les actions afférentes ainsi que des frais liés à la plainte.

Après avoir examiné les éléments de preuve présentés par les parties et tenu compte des dispositions de l'ALENA, le Tribunal a déterminé que le marché public n'avait pas été passé conformément aux dispositions de l'ALENA et que la plainte était donc fondée. Il a recommandé que la SCP ne procède pas aux renouvellements des conventions de services proposés et que, plutôt, une invitation à soumissionner soit publiée pour les services de gestion immobilière y figurant. La procédure de passation du marché public pour ces services devait être complétée dans un délai de six mois et se faire en conformité avec l'ALENA. Le Tribunal a accordé à FM One le remboursement des frais raisonnables qu'elle avait engagés pour la préparation et le traitement de la plainte.

Le Tribunal a rendu une décision concernant une plainte déposée par COGNOS Incorporated (COGNOS) à l'égard d'un marché public passé par TPSGC, au nom du ministère de la Justice, pour la fourniture d'un système d'information de gestion de l'équilibre de la structure adapté au ministère de la Justice et d'un système de traitement analytique en ligne, y compris les licences, l'assistance logiciel et la formation pour les utilisateurs.

COGNOS a allégué que l'invitation à soumissionner comprenait des spécifications techniques restrictives et un délai pour la soumission de propositions qui avaient l'effet de favoriser le produit d'un concurrent.

Après avoir examiné les éléments de preuve présentés par les parties et tenu compte des dispositions de l'ACI, de l'ALENA et de l'AMP, le Tribunal a déterminé que la plainte était fondée en partie et a recommandé que TPSGC lance une nouvelle invitation à soumissionner. En outre, le Tribunal a accordé à COGNOS le remboursement de ses frais raisonnables liés à la plainte.

Le Tribunal a rendu une décision concernant deux plaintes déposées par Hewlett-Packard (Canada) Ltée (Hewlett-Packard) à l'égard d'un marché public passé par TPSGC, au nom du ministère du Développement des ressources humaines (DRHC), pour l'élaboration et la mise en œuvre d'un plan de regroupement des services UNIX et l'établissement d'un moyen d'obtenir des services (y compris des services professionnels), de l'équipement et des logiciels, au fur et à mesure des besoins.

Hewlett-Packard a allégué que TPSGC avait incorrectement évalué une soumission d'un autre soumissionnaire comme conforme. Elle a aussi allégué que TPSGC avait déduit de façon irrégulière des dispositions de l'ALENA.

COGNOS Incorporated
PR-2001-036
Décision :
Plainte fondée
(20 février 2002)

Hewlett-Packard (Canada) Ltée
PR-2001-030
PR-2001-040
Décision :
Plaintes fondées
(21 février 2002)

cinq invitations à soumissionner n'avaient pas été passées en conformité avec les dispositions des accords commerciaux applicables et que les plaintes à leur égard étaient donc fondées en partie. La dernière invitation à soumissionner avait été annulée par TPSGC et n'était plus une question en litige. Le Tribunal n'a donc pas statué sur le bien-fondé de la plainte.

Le Tribunal a rendu une décision concernant une plainte déposée par FM One Alliance Corp. (FM One) au sujet de l'annulation, par la Société canadienne des postes (SCP), d'une demande de propositions (DP) portant sur la prestation de services de gestion des installations, le renouvellement proposé de la convention de gestion immobilière avec Brookfield LePage Johnson Controls Facility Management Services (BLJC) et le renouvellement proposé de la convention de gestion immobilière avec Profac Facilities Management Services Inc. (Profac).

FM One a allégué que, contrairement au paragraphe 1001(4) de l'ALENA, les « renouvellements » proposés avaient été structurés dans le but d'étudier les obligations du chapitre dix de l'ALENA. Elle a aussi allégué que, contrairement aux alinéas 1008(2)a) et 1008(2)b) de l'ALENA, les actions de la SCP menant aux marchés publics proposés n'avaient pas ouvert à tous les fournisseurs le même accès aux renseignements concernant lesdits marchés au cours de la période précédant la publication de tout avis ou de toute documentation relative à l'appel d'offres. En outre, FM One a allégué que la SCP n'avait pas publié d'invitation à participer aux marchés publics proposés et, de ce fait, avait contrevenu aux dispositions de l'article 1010 de l'ALENA. De plus, elle a allégué que la SCP avait utilisé, d'une manière injustifiée, des procédures d'appel d'offres limitées, contrairement aux dispositions de l'article 1016 de l'ALENA. Enfin, FM One a allégué que, lorsqu'elle avait établi ces marchés publics, la SCP avait contrevenu à l'alinéa 1015(4)e) de l'ALENA, qui prévoit que les clauses optionnelles ne peuvent être utilisées de façon à contourner le chapitre dix de l'ALENA.

À titre de mesure corrective, FM One a demandé qu'il soit ordonné à la SCP de reporter le renouvellement proposé des contrats passés avec BLJC et avec Profac jusqu'à ce que le Tribunal ait déterminé le bien-fondé de la plainte. De plus, FM One a demandé que le Tribunal ordonne à la SCP de modifier la DP de façon à la rendre conforme à l'ALENA et à des décisions antérieures rendues par le Tribunal et qu'elle poursuive la procédure d'appel d'offres avec les soumissionnaires qualifiés ou lance une nouvelle invitation à soumissionner, conforme à l'ALENA, pour les contrats spécifiques. À titre de mesure corrective subsidiaire, FM One a demandé une indemnité en reconnaissance des profits qu'elle avait perdus en raison des marchés publics vicieux. Elle a aussi demandé le

*Décision :
Plainte fondée
(27 juin 2001)*

PR-2000-063

FM One Alliance Corp.

Au cours de l'exercice, le Tribunal a rendu 32 décisions écrites faisant état de ses conclusions et recommandations à l'égard de 32 plaintes relatives aux marchés publics. En ce qui concerne 23 des 32 décisions écrites, il a été déterminé que la plainte était fondée en totalité ou en partie. Dix-sept plaintes étaient à l'étude à la fin de l'exercice. Ces activités sont résumées dans le tableau 1 qui figure à la fin du présent chapitre.

Parmi les causes entendues par le Tribunal dans le cadre de ses fonctions relatives à l'examen des marchés publics, certaines décisions ont été préparées à du fait de l'importance juridique des causes. Des sommaires ont été préparés à titre d'information et n'ont aucun statut juridique.

Le Tribunal a rendu une décision concernant six plaintes déposées par Polaris Inflatable Boats (Canada) Ltd. (Polaris) au sujet de six invitations à soumissionner des bureaux des régions du Pacifique, de l'Ontario, du Québec et de l'Atlantique du ministère des Travaux publics et des Services gouvernementaux (TPSGC) portant sur la fourniture de canots pneumatiques à coque rigide (CPCR) de six et de sept mètres pour le ministère des Pêches et des Océans (MPO) et son entité constitutive, la Garde côtière canadienne. Ensemble, les invitations à soumissionner portaient sur la fourniture de 12 CPCR au cours de l'exercice 2000-2001 et jusqu'à concurrence de 29 autres CPCR au cours des deux exercices suivants.

Polaris a allégué que, lorsqu'ils avaient lancé simultanément un si grand nombre d'invitations à soumissionner et n'avaient pas accordé un délai suffisant pour la préparation des soumissions et pour la livraison des CPCR, TPSGC et le MPO avaient conçu les invitations à soumissionner susmentionnées de façon à empêcher la concurrence et à favoriser un seul fournisseur, à savoir Zodiac Hurricane Technologies Inc. Elle a aussi formulé diverses allégations se rapportant respectivement à chacune des invitations à soumissionner susmentionnées.

À titre de mesure corrective, Polaris a demandé que TPSGC consulte les fournisseurs qualifiés afin d'établir des calendriers acceptables pour la présentation de réponses aux invitations à soumissionner et pour la construction et la livraison des CPCR. Elle a aussi demandé que TPSGC limite les contrats en vigueur à la fourniture des embarcations qui étaient nécessaires à ce moment-là et lance de nouvelles invitations à soumissionner équitables, accordant des délais réalistes pour la réponse aux invitations et pour la construction du reste des CPCR requis.

Après avoir examiné les éléments de preuve présentés par les parties et tenu compte des dispositions de l'ALÉNA et de l'ACI, le Tribunal a déterminé que

Sommaire des activités liées à l'examen des marchés publics

Le Tribunal décide ensuite si la plainte est fondée ou non. Si la plainte est jugée fondée, le Tribunal peut faire des recommandations à l'égard de l'institution fédérale (nouvel appel d'offres, réévaluation des soumissions ou versement d'une indemnité) et rembourser les frais engagés par la partie plaignante qui a gain de cause relativement à la préparation de sa soumission ou au traitement de sa contestation de l'offre. L'institution fédérale, ainsi que les autres parties et personnes intéressées, est avisée de la décision du Tribunal. Les recommandations que le Tribunal fait dans sa décision doivent, en vertu de la loi, être mises en œuvre dans toute la mesure du possible.

NOMBRE DE PLAINTES			
2000-2001	22	Reportées du dernier exercice	9
		Reçues au cours de l'exercice	78
		Total	87
2001-2002	11	Réglées par les parties	5
		Retirées ou réglées entre les parties	11
		Abandonnées pendant le dépôt	1
		Total partiel	6
QUI N'ONT PAS FAIT L'OBJET D'ENQUÊTES POUR DES RAISONS DE PROCÉDURE			
	8	Absence de compétence	6
		Déposées en retard	8
		Aucun fondement valable	17
	16	Rejetées	-
		Total partiel	31
TRANCHÉES SUR LE FOND			
	9	Plaintes non fondées	15
		Plaintes fondées en totalité ou en partie	13
		Total partiel	28
	17	EN SUSPENS À LA FIN DE L'EXERCICE	

CHAPITRE VI

EXAMEN DES MARCHÉS PUBLICS

Introduction

Les fournisseurs peuvent contester les décisions concernant la passation des marchés publics du gouvernement fédéral qui n'ont pas été faites conformément aux exigences du chapitre 10 de l'ALBNA, du chapitre cinq de l'ACI, de l'AMP ou de l'Accord sur l'achat de matériel de télécommunication entre le Canada et la Corée. Les parties de ces accords qui traitent des contestations des offres sont entrées en vigueur le 1^{er} janvier 1994, le 1^{er} juillet 1995, le 1^{er} janvier 1996 et le 1^{er} septembre 2001, respectivement.

Les fournisseurs potentiels, qui estiment ne pas avoir été traités équitablement au cours de l'appel d'offres, de l'évaluation des soumissions ou de l'adjudication des contrats pour un marché spécifique, peuvent déposer une plainte officielle auprès du Tribunal. Un fournisseur potentiel est invité à soulever, dans un premier temps, son opposition auprès de l'institution fédérale compétente. Si le fournisseur n'est pas satisfait de la réponse reçue ou s'il préfère s'adresser directement au Tribunal, il peut alors déposer une plainte auprès de ce dernier dans le délai prescrit.

Une fois la plainte déposée, le Tribunal l'examine en fonction des critères établis à cet effet. Si la plainte présente des lacunes, la partie plaignante est invitée à les corriger dans le délai prescrit. Si le Tribunal décide d'effectuer une enquête, il envoie à l'institution fédérale et à toutes les autres parties intéressées un avis de plainte officiel. Cet avis est également publié sur MERX et dans la *Gazette du Canada*. Si le contrat en cause n'a pas encore été adjugé, le Tribunal peut ordonner à l'institution fédérale d'en reporter l'adjudication en attendant qu'il ait statué sur la plainte, à moins que l'institution fédérale certifie que l'acquisition est urgente ou qu'un retard pourrait être contraire à l'intérêt public.

Après avoir reçu une copie de la plainte, l'institution fédérale compétente dépose un rapport de l'institution fédérale (RIF) pour répondre aux allégations. Une copie du RIF est envoyée à la partie plaignante et à tout intervenant, qui ont sept jours pour présenter leurs observations. Le Tribunal transmet ces observations à l'institution fédérale et aux parties à l'enquête.

Des copies de tout autre exposé ou rapport préparé aux fins de l'enquête sont également envoyées aux parties afin d'obtenir leurs commentaires. Lorsque cette étape de l'enquête est terminée, le Tribunal étudie les renseignements recueillis et décide s'il y a lieu de tenir une audience.

Recommandations en vigueur (suite)

Demande n° / Réexamen n°	Expiration n° (demande initiale)	Demanderesse/Intrant textile	Numéro(s) tarifaire(s)/Décret	Durée
TA-98-003	TE-98-001 (TR-95-014)	Velours de chaîne tissés coupés	5801,35,10	Indéterminée
TA-98-004	TE-98-002 (TR-94-002 et TR-94-002A)	Certains fils produits par filature à anneaux	5205,14,20 5205,15,20 5205,24,20 5205,26,20 5205,27,20 5205,28,20 5205,36,20 5205,46,20 5205,47,20 5205,48,20 5206,14,10 5206,15,10 5206,24,10 5206,25,10 5206,53,10 5206,53,20 5206,53,30 5209,53,40	Trois ans

Recommandations en vigueur (suite)

Demande n° / Réexamen n°	Expiration n° (demande initiale)	Demanderesse/Intrant textile	Numéro(s) tarifaire(s)/Décret	Durée
TR-98-004, TR-98-005 et TR-98-006		Ladcal Investments Ltd., s/n Pintar Manufacturing Nour Trading House et T.S. Simms and Company Limited	5806.10.20	Indéterminée
TR-98-007		Caulfield Apparel Group Ltd.	5208.43.30	Indéterminée
TR-98-016		Vêtements Peerless Inc.	5407.93.20	Indéterminée
TR-98-017		Jones Apparel Group Canada Inc.	5408.32.50 5408.33.20 5408.34.20	Indéterminée
TR-98-019		Les Vêtements de sports Tribal Inc.	5209.12.30 5209.22.20 5209.32.10	Indéterminée
TR-99-002		Albany International Canada Inc.	5404.10.20	Indéterminée
TR-99-003/003A		Western Glove Works Ltd.	5209.31.30 5209.32.30	Indéterminée
TR-99-004		Vêtements Peerless Inc.	5112.11.20 5112.11.30 5112.19.20 5112.19.30	Indéterminée
TR-99-005		Distex Inc.	6002.92.30	Indéterminée
TR-99-006		Coloridé Inc.	5402.41.15	Indéterminée
TR-99-008		JMJ Fashions Inc.	5407.61.20	Indéterminée
TR-2000-001		Vêtements Peerless Inc.	5408.22.22	Indéterminée
TR-2000-002		Les Industries Majeestic (Canada) Ltée	5802.19.30	Indéterminée
TR-2000-003		Tantalum Mining Corporation of Canada Limited	5911.40.10	Indéterminée
TR-2000-004		Ballin Inc.	5516.23.30 5516.93.20	Indéterminée
TR-2000-005		Vêtements Peerless Inc.	5112.11.40 5112.19.40	Indéterminée
TR-2000-007 et TR-2000-008		Scapa Tapes North America Ltd.	5208.21.50 5208.31.20	Indéterminée
TA-98-001	TE-97-004 (TR-95-009)	Certains tissus teints de rayonne et de polyester	5408.31.20 5408.32.30	Indéterminée
TA-98-002	TE-97-003 (TR-94-009)	Tissu Virex FR-9B	5512.99.10	Indéterminée

Recommandations en vigueur (suite)

Demande n°/ Réexamen n°	Expiration n° (demande initiale)	Demanderesse/Intrant textile	Numéro(s) tarifaire(s)/Décret	Durée
TR-96-003	Venture III Industries Inc.	5407 61.92	Indéterminée	
TR-96-004	Action International Inc.	5906 99.21	Indéterminée	
TR-96-006	Alpine Joe Sportswear Ltd.	C. P. 1998-1118	Six ans	
TR-96-008 et TR-96-010 à TR-96-013	Les Collections Shan Inc.	C. P. 1997-1668	Cinq ans	
TR-97-001	Jones Apparel Group Canada Inc.	5407 91.10 5407 92.20 5408 21.30 5408 22.40 5408 23.20 5408 31.30 5408 32.40 5408 33.10	Indéterminée	
TR-97-002 et TR-97-003	Manufacture Universelle Inc.	5208 43.30 5513 41.20	Indéterminée	
TR-97-006	Vêtements Peerless Inc.	5407 51.30 5903 90.22 5903 90.23 5903 90.24 6002 43.40 6002 43.50	Indéterminée	
TR-97-004, TR-97-007, TR-97-008 et TR-97-010	Blue Bird Dress of Toronto Ltd.	5407 51.20 5407 52.20 5407 61.94 5407 69.20	Indéterminée	
TR-97-011	Australian Outback Collection (Canada) Ltd.	5209 31.20 5907 00.16	Indéterminée	
TR-97-012	Ballin Inc.	5407 93.30 5516 23.20	Indéterminée	
TR-97-014	Les Industries Lenrod Ltée	5603 93.40	Indéterminée	
TR-97-015, TR-97-016 et TR-97-020	Helly Hansen Canada Ltd.	5903 20.24	Indéterminée	
TR-98-001	Cambridge Industries	5608 19.20	Indéterminée	
TR-98-002	Distex Inc.	6002 92.20	Indéterminée	

Recommandations en vigueur (suite)

Demande n° / Réexamen n°	Expiration n° (demande initiale)	Demanderesse/Intrant textile	Numéro(s) tarifaire(s)/Décret	Durée
TR-95-013A	Doubletex		5208.11.30 5208.12.40 5208.13.20 5208.19.30 5208.21.40 5208.22.20 5208.23.10 5208.29.20 5209.11.30 5209.12.20 5209.19.30 5209.21.20 5209.22.10 5209.29.20	Indéterminée
TR-95-036	Canadian Mill Supply Co. Ltd.	Bonneterie Paris Star Inc.	5208.21.20 5408.24.11 5408.24.91 5408.34.10 5516.14.10 5516.24.10 5407.41.10 5407.42.10 5407.42.20 5903.20.22	Indéterminée
TR-95-051	Camp Mate Limited		5802.11.10 5802.19.10 5802.19.20 3921.19.10 5407.69.10 5407.73.10 5407.94.10 5516.23.10 5903.90.21 6002.43.20	Indéterminée
TR-95-053 et	Les Industries Majestic (Canada) Ltée et Caulfield Apparel Group Ltd.		5407.51.10 5407.61.92 5407.69.10 5515.11.10 5516.21.10 5516.91.10	Indéterminée
TR-95-057 et	Doubletex		7019.59.10 6002.43.30 6002.43.60	Indéterminée
TR-95-060	Triple M Fiberglass Mfg. Ltd.	Camp Mate Limited		Indéterminée
TR-95-061				Indéterminée
TR-95-064 et	Lady Americana Sleep Products Inc. et Ameublement et ran Ltée			Indéterminée
TR-95-065				Indéterminée

TABLEAU 2

Recommandations d'allègement tarifaire en vigueur

Demande n°/Réexamen n°	Expiration n° (demande initiale)	Demanderesse/Intrant textile	Numéro(s) tarifaire(s)/Décret	Durée
TR-94-001	Les Industries Canatex (division de Tricot Richelieu Inc.)	5402.41.12	Indéterminée	
TR-94-004	Woods Canada Limited	5208.52.10	Indéterminée	
TR-94-010	Palliser Furniture Ltd.	5806.20.10	Indéterminée	
TR-94-012	Vêtements Peerless Inc.	5309.29.20	Indéterminée	
TR-94-013 et TR-94-016	MWG Apparel Corp.	5208.42.20 5208.43.20	Indéterminée	
TR-94-017 et TR-94-018	Elite Counter & Supplies	9943.00.00 5513.31.10 5513.32.10 5513.33.10	Indéterminée	
TR-95-003	Landes Canada Inc.	5603.12.20 5603.13.20 5603.14.20 5603.91.20 5603.92.20 5603.93.20 5603.94.20	Indéterminée	
TR-95-004	Lingerie Bright Sleepwear (1991) Inc.	5208.12.20 5208.52.20	Indéterminée	
TR-95-005	Lingerie Bright Sleepwear (1991) Inc.	5513.11.10 5513.41.10	Indéterminée	
TR-95-009	Vêtements Peerless Inc.	5408.21.10 5408.21.20 5408.22.21 5408.22.30	Indéterminée	
TR-95-010 et TR-95-034	Freed & Freed International Ltd. et Fern-nelli Fashions Inc.	5111.19.10 5111.19.20	Indéterminée	
TR-95-011	Louben Sportswear Inc.	5408.31.10 5408.32.20	Indéterminée	
TR-95-012	Teinturerie Perfect Canada Inc.	5509.32.10	Indéterminée	

TABLEAU 1

Règlement des demandes d'allègement tarifaire entre le 1^{er} avril 2001 et le 31 mars 2002

Demande n°	Demanderesse	Intrant textile	Date du règlement	État/recommandations
TR-2000-005	Vêtements Peerless Inc.	Tissu	Le 1 ^{er} octobre 2001	Allègement tarifaire pour une période indéterminée
TR-2000-006	Doubletex	Tissu	En cours	Allègement tarifaire pour une période indéterminée
TR-2000-007	Scapa Tapes North America Ltd.	Tissu	Le 13 septembre 2001	Allègement tarifaire pour une période indéterminée
TR-2000-008	Scapa Tapes North America Ltd.	Tissu	Le 13 septembre 2001	Allègement tarifaire pour une période indéterminée
TR-2001-001	Gibson Textile Dyers Ltd.	Tissu	En cours	Allègement tarifaire pour une période indéterminée
TR-2001-002	Les Industries Beco Liée	Tissu	Le 20 mars 2002	Allègement tarifaire pour certains tissus en polyester-coton; aucun allègement tarifaire pour certains tissus en nylon

nationale de textiles est capable de fournir des tissus en nylon destinés à la production de sacs de couchage et de housses de sac de couchage.

En ce qui concerne la question de l'incidence économique nette, le Tribunal ne voit pas de coûts associés à l'allégement tarifaire demandé par Les Industries Beco Ltée (Beco) sur les tissus en polyester-coton. À la lumière des renseignements dont disposait le Tribunal, l'allégement tarifaire procurerait des gains annuels nets pour Beco d'un montant dépassant 50 000 \$, sous forme de baisse des coûts des intrants. Eu égard à la demande de Beco visant l'application de l'allégement tarifaire avec effet rétroactif, le Tribunal a déclaré, dans des causes précédentes, qu'il n'envisagerait la recommandation d'un tel allégement que dans des circonstances exceptionnelles. Beco n'a pas présenté d'éléments de preuve qui justifiaient une telle recommandation.

Deux usines de textiles nationales ont fait opposition à la demande. Cley & Tinker Inc. (Cley & Tinker) a prétendu qu'elle produisait une vaste gamme de tissus de laine peignée identiques ou substituables, et Victor Woolen Products, Ltd. (Victor) a indiqué que, bien qu'elle ne produise pas de tissus identiques ou substituables, une de ses filiales aux États-Unis en produisait.

Le Tribunal a concentré son analyse exclusivement sur Cley & Tinker, étant donné qu'il était d'avis que la situation de Victor concernant la disponibilité éventuelle de tissus produits aux États-Unis n'était pas pertinente. Le Tribunal a constaté que Cley & Tinker ne fabriquaient pas tellement, ni ne vendait beaucoup, de tissus de laine très fins qui faisaient l'objet de la demande, mais se consacraient plutôt au marché des tissus de laine dont les fibres sont un peu plus grossières. Il a en outre fait observer que la production et la vente de tissus censément identiques ou substituables représentaient une petite portion des activités de Cley & Tinker. Le Tribunal a aussi souligné que le prix rendu des tissus en question était, dans la très grande majorité des cas, sensiblement plus élevé que le prix de vente moyen des tissus censément substituables produits par Cley & Tinker.

Le Tribunal a reconnu que, en raison d'un certain degré de substituableté des tissus, l'allègement tarifaire pourrait avoir des conséquences négatives sur Cley & Tinker. Cependant, le Tribunal était d'avis que tous les coûts seraient largement compensés par les avantages qu'en retireraient Vêtements Peerless Inc. et d'autres fabricants de vêtements qui utilisent ces tissus. Selon les prévisions du Tribunal, ces avantages annuels atteindraient plus de 3 millions de dollars. Par conséquent, le Tribunal a recommandé d'accorder un allègement tarifaire sur ces tissus.

Le Tribunal a recommandé au ministre des Finances d'accorder un allègement tarifaire, pour une période indéterminée, sur les importations, en provenance de tous les pays, des tissus de fibres discontinues en polyester, contenant moins de 85 p. 100 en poids en polyester, mélangés uniquement avec du coton, imprimés, à armure toile, d'un poids n'excédant pas 100 g/m², de la sous-position n° 5513.41, devant servir dans la fabrication de sacs de couchage. Il n'a pas recommandé l'allègement tarifaire sur les tissus, uniquement de fils de filaments en nylon, teints, à armure toile, d'un poids n'excédant pas 70 g/m², de la sous-position n° 5407.42, devant servir dans la fabrication de sacs de couchage ou de housses de sac de couchage faites à partir des mêmes tissus.

Le Tribunal a fait observer que Consoltex Inc. et Doubletex Inc. sont des producteurs de tels tissus et que toutes deux ont produit et ont vendu des tissus en nylon à un nombre de fabricants canadiens de sacs de couchage et comptent toujours, parmi leurs clients, certains des plus grands producteurs nationaux de sacs de couchage. Ceci indique, de toute évidence, que la branche de production

Les Industries Beco
Lée

TR-2001-002

Recommandation:
Allègement tarifaire
pour une période
indéterminée /Aucun
allègement tarifaire
(20 mars 2002)

Au cours de l'exercice, le Tribunal a transmis trois rapports au ministre des Finances concernant quatre demandes d'allègement tarifaire. À la fin de l'année, deux demandes faisaient l'objet d'une enquête. Le tableau 1 à la fin du présent chapitre résume ces activités.

À la fin de l'exercice, le gouvernement avait mis en œuvre 85 recommandations faites par le Tribunal, dont 78 font toujours l'objet de décrets sur des allègements tarifaires. Le tableau 3 résume les recommandations mises en œuvre à ce jour.

La mise en œuvre de recommandations du Tribunal est effectuée en ajoutant des nouveaux numéros tarifaires au *Tarif des douanes*. Au cours de l'exercice, ces numéros tarifaires visaient des importations d'une valeur (estimative) de 1 72 millions de dollars et ont permis un allègement tarifaire d'une valeur (estimative) de 23 millions de dollars; ces derniers montants sont comparables aux montants relevés l'an dernier.

Un sommaire des recommandations que le Tribunal a publiées au cours de l'exercice suit.

Le Tribunal a recommandé au ministre des Finances d'accorder un allègement tarifaire pour une période indéterminée sur les importations de tissus, uniquement de coton, blanchis ou teints, armure toile, produits par filature à anneaux, d'un poids n'excédant pas 1 00 g/m², de la sous-position n° 5208.21 ou 5208.31, devant servir à la fabrication de ruban autoadhésif.

Le Tribunal était d'avis qu'il n'y aurait pas de coûts économiques directs associés à la suppression des droits de douane sur les importations des textiles en question, puisque les producteurs nationaux de textiles ne les produisaient pas. Par conséquent, le Tribunal a conclu que l'allègement tarifaire entraînerait des bénéfices annuels dépassant 500 000 \$ pour Scapa Tapes North America Ltd.

Le Tribunal a recommandé au ministre des Finances d'accorder un allègement tarifaire pour une période indéterminée sur les importations de tissus, faits uniquement de laine peignée ou mélangés uniquement avec du coton, de la soie ou des fibres artificielles, contenant au moins 95 p. 100 en poids de laine peignée ayant un diamètre de fibres moyen d'au plus 18,5 microns, d'un poids d'au plus 220 g/m², du numéro tarifaire 5112.19, devant servir à la confection de complets, de vestes, de blazers, de gilets et de pantalons pour hommes.

Recommandations
présentées au cours
de l'exercice

Recommandations en
vigueur

Scapa Tapes North
America Ltd.

TR-2000-007 et
TR-2000-008

Recommandation :
Allègement tarifaire
pour une période
indéterminée
(13 septembre 2001)

Vêtements Peenless
Inc.

TR-2000-005

Recommandation :
Allègement tarifaire
pour une période
indéterminée
(1^{er} octobre 2001)

plus bref qu'il juge approprié. Le Tribunal ne recommandera la réduction ou la suppression des droits de douane sur un intrant textile que si l'allègement tarifaire demandé assure des gains économiques nets maximaux au Canada.

Lorsque le ministre des Finances a rendu un décret sur un allègement tarifaire conformément à une recommandation du Tribunal, certains producteurs nationaux peuvent demander au Tribunal d'ouvrir une enquête afin de recommander la modification ou l'annulation du décret. Une demande de modification ou d'annulation du décret doit préciser en quoi les circonstances justifiant cette demande ont changé.

Lorsque le ministre des Finances a rendu un décret sur un allègement tarifaire pour une période déterminée, le Tribunal publiera, avant la date d'expiration, un avis officiel selon lequel l'allègement tarifaire prévu par le décret ne sera plus en vigueur à moins que le Tribunal ne fasse une recommandation de prorogation de l'allègement tarifaire et que le ministre des Finances ne mette cette dernière en œuvre. L'avis invite les parties intéressées à déposer des exposés pour ou contre la prorogation de l'allègement tarifaire.

Si le Tribunal ne reçoit aucune opposition à la prorogation de l'allègement tarifaire, au moment où le Tribunal reçoit les exposés et les renseignements appuyant la demande de prorogation de l'allègement tarifaire, il peut décider de recommander la prorogation de l'allègement tarifaire. Réciproquement, si aucune demande de prorogation de l'allègement tarifaire n'est reçue, le Tribunal peut décider de recommander l'annulation de l'allègement tarifaire. S'il semble justifié d'entreprendre un examen plus exhaustif, le Tribunal effectuera une enquête afin de considérer si tous les facteurs pertinents qui ont dicté la recommandation de l'allègement tarifaire s'appliquent encore et si la prorogation de l'allègement tarifaire dans les conditions actuelles continue d'assurer des gains économiques nets au Canada.

Demande de réexamen

Examen relatif à l'expiration

Rapport de situation annuel

Conformément au mandat confié au Tribunal d'enquêter sur les demandes présentées par les producteurs canadiens qui souhaitent obtenir des allègements tarifaires sur les intrants textiles importés dans le cadre de leurs activités de fabrication, le Tribunal a présenté au ministre des Finances, le 25 février 2002, son septième rapport de situation annuel sur le mécanisme d'enquête. Ce rapport portait sur la période allant du 1^{er} octobre 2000 au 30 septembre 2001.

Enquêtes

Lorsque le Tribunal estime que le dossier de la demande est complet, il ouvre une enquête. Un avis d'ouverture d'enquête est envoyé à la demanderesse, à toutes les parties intéressées connues et tout ministère ou organisme gouvernemental pertinent, comme le ministère des Affaires étrangères et du Commerce international, le ministère de l'Industrie, le ministère des Finances et l'ADRC. L'avis est aussi publié dans la *Gazette du Canada*.

Dans une enquête, la liste des parties intéressées comprend les producteurs nationaux, certaines associations et d'autres personnes qui sont autorisées à être entendues par le Tribunal en raison du fait que les recommandations du Tribunal peuvent avoir une incidence sur leurs droits ou leurs intérêts financiers. Les parties intéressées sont avisées de la demande et peuvent participer à l'enquête. On entend par parties intéressées les concurrents de la demanderesse, les fournisseurs de marchandises qui sont identiques ou substituables à l'intrant textile et les utilisateurs en aval des marchandises produites à partir de l'intrant textile.

Pour préparer un rapport d'enquête du personnel du Tribunal recueillie de l'information au moyen de visites des installations et de questionnaires. Les renseignements obtenus de la demanderesse et des parties intéressées, comme un fournisseur national de l'intrant textile, servent à déterminer si l'allégement tarifaire demandé assurera des gains économiques nets maximaux au Canada.

Habituellement, une audience publique n'est pas nécessaire, et le Tribunal statue sur la foi du dossier complet, y compris la demande, le rapport d'enquête du personnel et tous les exposés et éléments de preuve déposés auprès du Tribunal.

La procédure élaborée pour le déroulement des enquêtes du Tribunal prévoit la pleine participation de la demanderesse et de toutes les parties intéressées. Une partie, autre que la demanderesse, peut déposer des observations, y compris des éléments de preuve, en réponse au dossier complet de la demande, au rapport d'enquête du personnel et à tout renseignement fourni par un ministère ou un organisme gouvernemental. La demanderesse peut ensuite déposer des observations auprès du Tribunal en réponse au rapport d'enquête du personnel et à tout renseignement fourni par un ministère ou un organisme gouvernemental.

Le Tribunal présente habituellement ses recommandations motivées au ministre des Finances dans les 120 jours suivant la date de l'ouverture de l'enquête. Dans les cas exceptionnels, lorsque le Tribunal détermine qu'il est en présence d'une situation d'urgence, il présente ses recommandations dans le délai

Recommandations au
Ministre

de la portée de la saisine sur les textiles :

Fils à tricoter, constitués uniquement de fibres de coton ou uniquement de fibres discontinues de coton et de polyester, tirant plus de 190 décitex, du Chapitre 52 ou de la sous-position n° 5509.53, autres que ceux utilisés pour confectionner des chandails, présentant une lisière finie horizontale non cousue et dont les surfaces extérieures sont essentiellement constituées de 9 mailles ou moins par 2 cm (12 mailles ou moins par pouce) dans le sens horizontal.

Types d'allègement possibles

L'allègement tarifaire que le Tribunal peut recommander au ministre des Finances varie de l'élimination ou de la réduction des tarifs sur une ou plusieurs lignes tarifaires, totales ou partielles, à des dispositions tarifaires applicables à un textile ou à une utilisation finale déterminée. Seulement dans le cas de demandes d'allègement tarifaire sur les intrants textiles utilisés dans la confection de maillots de bain, de vêtements de plage coordonnés et d'accessoires coordonnés pour dames, la recommandation peut-elle être applicable à une entreprise. La recommandation peut porter sur un allègement tarifaire soit pour une période spécifique, soit pour une période indéterminée. Cependant, le Tribunal ne recommande que des allègements tarifaires pouvant être mis en application de manière économique.

Procédure

Les producteurs nationaux demandant un allègement tarifaire doivent déposer une demande auprès du Tribunal. Les producteurs doivent déposer, avec leur demande d'allègement tarifaire, des échantillons de l'intrant textile visé ou une décision nationale des douanes de l'ADRC sur l'intrant. Si le Tribunal détermine que le dossier de la demande est complet, il effectue une enquête afin de déterminer s'il doit recommander un allègement tarifaire.

Dépôt et notification d'une demande

Sur réception d'une demande d'allègement tarifaire, et avant de procéder à l'ouverture d'une enquête, le Tribunal fait paraître, sur son site Web, un bref avis de réception de la demande. La notification d'une demande doit être faite au moins 30 jours avant l'ouverture de l'enquête.

Une telle façon de faire est conçue pour augmenter la transparence, permettre de déceler l'existence de lacunes dans la demande, éviter les enquêtes inutiles, donner à l'industrie textile nationale l'occasion de communiquer avec la demanderesse et de convenir d'une source nationale raisonnable d'approvisionnement, informer les autres utilisateurs d'intrants textiles ou substituables ainsi que préparer les producteurs nationaux à répondre aux questionnaires d'enquête éventuels, et donner aux associations un délai préalable de planification et de consultation de leurs membres.

Saisine sur les textiles

Portée de la saisine

que ce soit, il formulera des recommandations à l'égard de cette marchandise en vue de la prise de mesures corrigeant, sur une période de trois ans, le dommage qui a été causé ou qui menace d'être causé par les importations accrues.

Les marchandises qui font l'objet de l'enquête comprennent les produits plats au carbone et en acier allié, les produits « longs » en acier au carbone et en acier allié et les tubes en acier au carbone et en acier allié avec ou sans soudure. Les marchandises qui seront examinées dans le cadre de l'enquête sont les suivantes : produit plat en acier au carbone et en acier allié — tôle forte; produit plat en acier au carbone et en acier allié — tôle laminée à chaud, en feuilles et en bobines; produit plat en acier au carbone et en acier allié — tôle à résistance et en bobines; produit plat en acier au carbone et en acier allié — tôle à résistance à la corrosion, en feuilles et en bobines; produit en acier au carbone et en acier allié — barres laminées à chaud; produit en acier allié — barres et tiges étirées et finies à froid; produit en acier au carbone et en acier allié — barres d'armature; tubes en acier au carbone et en acier allié, avec ou sans soudure, ayant jusqu'à 16 pouces de diamètre extérieur.

Tel qu'il a été ordonné par son Excellence, le Tribunal transmettra avis de toute décision le 4 juillet 2002 et un rapport exposant les motifs de toute décision et toute recommandation le 19 août 2002.

Conformément au mandat que lui a confié le ministre des Finances le 6 juillet 1994, et qui a été modifié les 20 mars et 24 juillet 1996, le 26 novembre 1997 ainsi que le 19 août 1999, le Tribunal doit enquêter sur les demandes présentées par les producteurs nationaux qui souhaitent obtenir des allègements tarifaires sur les intrants textiles importés dans le cadre de leurs activités de fabrication, puis formuler des recommandations au ministre des Finances concernant ces demandes.

Un producteur national peut demander un allègement tarifaire sur un intrant textile importé qu'il utilise, ou qu'il compte utiliser, dans ses activités de production. Les intrants textiles pour lesquels un allègement tarifaire peut être demandé sont les fibres, les fils et les tissus visés aux Chapitres 51, 52, 53, 54, 55, 56, 58, 59 et 60; certains monofilaments ou bandes et les combinaisons de textile et de plastique visés au Chapitre 39, les fils de caoutchouc et les combinaisons de textile et de caoutchouc visés au Chapitre 40, et les produits textiles de fibres de verre visés au Chapitre 70 de l'annexe du *Tarif des douanes*. Depuis le 24 juillet 1996 et au moins jusqu'au 1^{er} juillet 2002, les fils suivants sont exclus

CHAPITRE V

SAISINES SUR LES QUESTIONS ÉCONOMIQUES, COMMERCIALES ET TARIFAIRES, ET MESURES DE SAUVEGARDE

Introduction

La Loi sur le TCCF renferme des dispositions générales aux termes desquelles le gouvernement ou le ministre des Finances peut demander au Tribunal de faire enquête sur des questions économiques, commerciales ou tarifaires. Dans le cadre d'une enquête, le Tribunal agit à titre consultatif, avec le mandat de faire des recherches, de recevoir les exposés et les observations, de trouver les faits, de tenir des audiences publiques et de présenter un rapport au gouvernement ou au ministre des Finances accompagné, au besoin, de recommandations.

Une des responsabilités du Tribunal est de faire enquête pour déterminer si les producteurs canadiens subissent un dommage grave en raison d'importations en quantités accrues de marchandises au Canada. Le Tribunal peut ouvrir une enquête de sauvegarde contre les importations à la suite d'une plainte des producteurs nationaux. Le gouvernement peut aussi ordonner au Tribunal de mener des enquêtes de sauvegarde contre les importations. À la suite d'une enquête où le Tribunal a déterminé que les importations accrues de marchandises ont causé, ou menacent de causer, un dommage grave aux producteurs canadiens de marchandises similaires ou directement concurrentes, le gouvernement peut mettre en œuvre des mesures de sauvegarde contre les importations pour aider ces producteurs nationaux.

Enquête de sauvegarde

Le 21 mars 2002, son Excellence la Gouverneure générale en conseil, sur recommandation du ministre des Finances et du ministre du Commerce international, conformément à l'alinéa 20a) de la Loi sur le TCCF, a ordonné au Tribunal d'enquêter et de faire rapport sur l'importation de certaines

L'enquête a pour objet de déterminer si l'une ou l'autre des marchandises visées par l'enquête a été importée au Canada de toutes provenances, depuis le début de 1996, en quantité tellement accrue et dans des conditions telles que son importation constitue une cause principale du dommage grave porté aux producteurs canadiens de marchandises similaires ou directement concurrentes. Si le Tribunal arrive à une décision positive relativement à quelque marchandise

TABLEAU 3

Décisions d'appels rendues par la Cour fédérale du Canada entre le 1^{er} avril 2001 et le 31 mars 2002¹

Appel n°	Appelante	Dossier de la Cour fédérale n°	Décision	Date
AP-89-153	Mo-Tires Ltd.	T-3288-90	Abandonné	Le 10 septembre 2001
AP-90-076	Kilweers Cabinets Ltd.	T-1331-91/ T-1986-94	Rejetés	Le 28 décembre 2001
AP-91-045	Imperial Cabinet (1980) Co. Ltd.	T-1557-92	Rejeté	Le 28 décembre 2001
AP-94-212 et AP-94-213	Chaps Ralph Lauren, A Division of 131384 Canada Inc. et Modes Alto-Regal, Inc.	A-53-98	Abandonné	Le 30 novembre 2001
AP-97-063, AP-97-067, AP-97-077, AP-97-079, AP-97-084, AP-97-085, AP-97-096, AP-97-103, AP-97-115 et AP-97-136	AYP (Canada) Inc.	A-57-00	Rejeté	Le 10 mai 2001
AP-99-014	Patagonia International Inc.	A-820-00	Abandonné	Le 3 août 2001
AP-99-029 et AP-99-046	Sanyo Canada Inc.	A-605-00	Abandonné	Le 1 ^{er} juin 2001
AP-99-063	GL&V/Black Clawson-Kennedy	A-306-00	Rejeté	Le 30 janvier 2002
AP-99-083	Sandvik Tamrock Canada Inc. et Secoroc, A Division of Atlas Copco Canada Inc.	A-550-00	Admis	Le 9 novembre 2001
AP-99-105	Yamaha Motor Canada Ltée	A-001-01	Rejeté	Le 24 janvier 2002

1. Le Tribunal a fait des efforts valables pour s'assurer que l'information indiquée ci-dessus est complète. Néanmoins, puisque le Tribunal ne participe pas aux appels interjetés auprès de la Cour fédérale du Canada, il ne peut affirmer que la liste contient toutes les décisions relatives à ces appels rendues entre le 1^{er} avril 2001 et le 31 mars 2002.

TABLEAU 2

Décisions du Tribunal portées en appel devant la Cour fédérale du Canada entre le 1^{er} avril 2001 et le 31 mars 2002 et en instance au 31 mars 2002¹

Appel n°	Appelante	Dossier de la Cour fédérale n°
AP-89-013	Hyallin International (1986) Inc.	T-1635-92
AP-90-117	Artec Design Inc.	T-1556-92
AP-91-141	The Sheldon L. Kates Design Group Limited	T-2957-94
AP-93-123	W. Ralston (Canada) Inc.	T-2112-95
AP-93-264	Cragg & Cragg Design Group Ltd.	T-2942-94
AP-96-056	Informco Inc.	T-2689-97
AP-97-137	Asea Brown Boveri Inc.	A-171-00
AP-98-047	N.C. Cameron & Sons Ltd.	A-341-00
AP-99-062	Barney Printing Limited	T-1627-01
AP-2000-035	Abraham Goldrich	A-023-02

1. Le Tribunal a fait des efforts valables pour s'assurer que l'information indiquée ci-dessus était complète. Néanmoins, puisque le Tribunal ne participe pas aux appels interjetés auprès de la Cour fédérale du Canada, il ne peut affirmer que la liste contient toutes les décisions du Tribunal portées en appel devant la Cour fédérale du Canada entre le 1^{er} avril 2001 et le 31 mars 2002.

Décisions d'appels rendues (suite)

Appel n°	Appelante	Date de la décision	Décision
Loi sur la taxe d'accise			
AP-91-074	Steven Frellovitch Advertising Inc.	Le 20 avril 2001	Rejeté
AP-99-062	Barney Printing Limited	Le 15 mai 2001	Rejeté
AP-91-073	Howes, Waldon Associates Ltd.	Le 25 mai 2001	Rejeté
AP-91-071 et AP-91-072	Johnston & Beaudry Advertising & Design Inc.	Le 12 juillet 2001	Rejetés
AP-2000-021	1211863 Ontario Inc. o/a A&T Leasing	Le 1 ^{er} août 2001	Admis en partie
AP-97-086 à AP-97-090	Beatrice Foods Inc. (etc.)	Le 19 février 2002	Rejetés
AP-99-088	Montecristo Jewellers Inc.	Le 15 mars 2002	Rejeté
AP-2000-052	Les Produits Baratrix International Inc.	Le 21 février 2002	Rejeté

LMSI

TABLEAU 1

Décisions d'appels rendues aux termes de l'article 67 de la *Loi sur les douanes*, de l'article 81.19 de la *Loi sur la taxe d'accise* et de l'article 61 de la *LMSI* entre le 1^{er} avril 2001 et le 31 mars 2002

Appel n°	Appelante	Date de la décision	Décision
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AP-99-045	Prins Greenhouses Ltd.	Le 9 avril 2001	Admis en partie
AP-99-067	Toys "R" Us (Canada) Ltd.	Le 12 avril 2001	Admis
AP-95-149 à AP-95-165, AP-95-067 et AP-98-041 et AP-98-060	Toyota Canada Inc.	Le 2 mai 2001	Rejetés
AP-2000-018	Transilwrap of Canada, Ltd.	Le 11 septembre 2001	Admis
AP-2000-028	Alliance RO-NA Home Inc.	Le 17 septembre 2001	Rejeté
AP-2000-060	Utex Corporation	Le 26 septembre 2001	Admis
AP-2000-035	Abraham I. Goldrich	Le 17 octobre 2001	Admis
AP-2000-047	Imation Canada Inc.	Le 29 novembre 2001	Admis
AP-2000-050	Costco Canada Inc.	Le 30 novembre 2001	Rejeté
AP-2000-020	Byrce Rollins	Le 21 décembre 2001	Rejeté
AP-2000-059	Wayne Ericksen	Le 3 janvier 2002	Rejeté
AP-2000-057	Intersave West Buying and Merchandising Services	Le 7 janvier 2002	Admis
AP-2000-013	Rebecca Vigod	Le 10 janvier 2002	Rejeté
AP-2000-022	Clariant (Canada) Inc.	Le 25 janvier 2002	Admis
AP-2000-056	La Société Canadian Tire Limitée	Le 19 février 2002	Admis
AP-96-230 à AP-96-236	Great Canadian Casino Company Ltd.	Le 26 février 2002	Admis en partie
AP-99-080	Charles Leung	Le 27 février 2002	Rejeté
AP-2001-019	Travis G. Parent	Le 6 mars 2002	Rejeté
AP-2000-041	Formica Canada Inc.	Le 7 mars 2002	Rejeté
AP-2000-040	Sable Offshore Energy Incorporated	Le 15 mars 2002	Rejeté

marchandises importées et sur d'autres questions visées par la *Loi sur les douanes* sont protégées par une clause privative partielle, atténuée par le droit d'appel à la Cour d'appel fédérale sur « tout point de droit ». Le droit d'appel sur un point de droit découle du fait que l'expertise du Tribunal ne se rapporte pas à de telles questions, comme les questions inhérentes au droit commercial, par exemple.

Cet appel a été interjeté aux termes de l'article 67 de la *Loi sur les douanes* à l'égard de trois décisions rendues le 6 décembre 2000 par le commissaire, aux termes du paragraphe 60(4) de la *Loi sur les douanes*. Les marchandises en cause étaient des jeux de tournevis à prise multiple et lames et des jeux de tournevis. La question en litige dans cet appel portait sur le classement approprié de ces marchandises. L'intimé avait déterminé que les marchandises en cause étaient correctement classées à titre de « tournevis » (numéro tarifaire 8205.40.00). L'appelante soutenait qu'elles devaient être classées à titre d'« autres outils interchangeables » (numéro tarifaire 8207.90.90) ou à titre de « porte-outils » (numéro tarifaire 8466.10.00).

L'appel a été admis. Le Tribunal a déterminé que les marchandises en cause ne pouvaient être classées conformément à la Règle 1 des Règles générales à titre de tournevis dans la position n° 82.05. Il a conclu que les marchandises en cause étaient en fait deux articles distincts pouvant être classés dans des positions différentes.

Le Tribunal a déterminé que les marchandises étaient des articles présents en assortiments conditionnés pour la vente au détail. Les positions n°s 82.07 et 84.66 se rapportent à une partie seulement des marchandises en cause et ont donc été considérées comme également spécifiques. Il a aussi tenu compte des Règles 3 a) et 3 b) des Règles générales. Il a été jugé que la Règle 3 a) ne s'appliquait pas. Cependant, le Tribunal a été guidé par la Règle 3 b) pour conclure que les lames de tournevis confèrent leur caractère essentiel aux jeux. Le jeu de tournevis à prise multiple et lames comprend 17 lames et le jeu de tournevis comprend 28 lames, ce qui représente la majorité des composants des jeux. Le Tribunal a conclu que les lames de tournevis conféraient aux jeux leur fonction générale et leur adaptabilité et permettaient aux consommateurs de pouvoir travailler avec une vaste gamme de vis. Le Tribunal a également conclu que les marchandises en cause devaient être classées dans le numéro tarifaire 8207.90.90.

Le 7 juin 2001, la Cour suprême du Canada a rendu une décision qui traitait de la norme de contrôle applicable aux décisions du Tribunal portant sur la valeur en douane de marchandises importées en vertu de la *Loi sur les douanes*. Dans *Canada (Sous-ministre du Revenu national) c. Matiel Canada*, [2001] 2 R.C.S. 100, la Cour suprême du Canada a décidé que la norme de contrôle applicable aux décisions du Tribunal, qui était indiquée dans de telles affaires, était la norme de la décision correcte sur tout point de droit. Les questions de droit commandant l'application de principes d'interprétation législative et d'autres concepts liés au droit commercial sont susceptibles de révision judiciaire. Les décisions du Tribunal portant sur la valeur en douane de

Cet appel a été interjeté aux termes de l'article 67 de la *Loi sur les douanes* à l'égard de décisions rendues par le commissaire aux termes du paragraphe 60(4) de la *Loi sur les douanes*. La question en litige portait sur le classement approprié du lait de coco en boîte.

L'intimé prétendait que le lait de coco était correctement classé à titre d'autres préparations alimentaires non dénommées ni comprises ailleurs (numéro tarifaire 2106.90.99). L'appellante soutenait que le produit devait être classé dans le numéro tarifaire 2009.80.19 à titre d'autre jus de tout autre fruit ou légume ou, subsidiairement, dans le numéro tarifaire 2008.99.90 à titre d'autres fruits et autres parties comestibles de plantes.

L'appel a été admis. Il a été conclu que le produit était correctement classé à titre d'autres fruits et autres parties comestibles de plantes (numéro tarifaire 2008.99.90). Le Tribunal a fait observer que la position n° 20.09 englobe les jus de fruits et les jus de légumes. À la lecture des Notes explicatives de la position n° 20.09, le Tribunal était convaincu que, pour qu'un jus de fruit de composition normale soit classé dans la position n° 20.09, il ne doit pas contenir de l'eau ajoutée. Étant donné que le produit en cause contenait de l'eau ajoutée, même si le Tribunal devait considérer le lait de coco comme un jus de fruit de composition normale, il ne répondrait pas aux exigences des Notes explicatives de la position n° 20.09.

Le Tribunal a aussi tenu compte des positions n°s 20.08 et 21.06. La position n° 20.08 couvre les fruits et autres parties comestibles de plantes, tandis que la position n° 21.06 couvre les préparations alimentaires non dénommées ni comprises ailleurs. Les Notes explicatives de la position n° 20.08 permettent l'adjonction d'autres substances aux produits de cette position, pour autant qu'elles n'affectent pas le caractère essentiel des fruits. Par conséquent, le fait que le produit en cause contienne de l'eau ajoutée et un agent de préservation n'empêche pas son classement dans cette position.

Le Tribunal était d'accord avec l'appelante sur le fait que la position n° 21.06 avait un caractère résiduel et sur le fait que les Notes explicatives de cette position excluent les préparations de fruits ou de noix, pour autant que le caractère essentiel de la préparation lui soit conféré par ces fruits ou ces noix. Il a conclu que le caractère essentiel du lait de coco en boîte lui est conféré par la noix de coco elle-même.

Intersave West
Buying and
Merchandising
Services
ADRC
AP-2000-057
Décision :
Appel admis
(7 janvier 2002)

n° NQ-95-002, et plus particulièrement étant donné le renvoi qui y avait été fait aux « autres » sucres de spécialité, le Tribunal a conclu que le produit en cause pouvait aussi être décrit comme étant un sucre de spécialité sous forme de granules.

Cet appel a été interjeté aux termes de l'article 81.19 de la *Loi sur la taxe d'accise* à l'égard d'une demande de remboursement de la taxe d'accise portant sur des climatiseurs installés dans des automobiles. Le 23 mars 2000, le ministre du Revenu national avait rendu un nombre de décisions en vertu de l'article 68.1 dans lesquelles il rejetait la demande de remboursement de la taxe d'accise de l'appelante, imposée sur des climatiseurs installés dans des automobiles exportées.

La question en litige dans cet appel consistait à déterminer si l'appelante avait droit à un remboursement de la taxe d'accise en vertu de l'article 68.1 de la *Loi sur la taxe d'accise*, laquelle taxe est imposée sur des climatiseurs installés dans des automobiles exportées.

1211863 Ontario Inc.
S/N A & T Leasing
c.
MRN
AP-2000-021
Décision :
Appel admis en partie
(1^{er} août 2001)

dernières conditions avaient été satisfaites.

Le Tribunal a conclu que les factures des concessionnaires (seules ou avec l'aide des factures du fabricant), qui indiquaient qu'une taxe d'accise était incluse dans le prix de l'automobile ou qui mentionnaient que l'automobile était équipée d'un climatiseur, étaient suffisantes pour établir que la taxe d'accise était exigible. En outre, le Tribunal a pris note du fait que la taxe sur les produits et services sur la taxe d'accise avait été remboursée à l'appelante et que c'était là une indication que les automobiles avaient été achetées par elle et que la taxe d'accise avait été payée par l'exportateur dans cette affaire.

Le Tribunal a conclu que, dans tous les cas où les factures des concessionnaires, seules ou avec l'aide des factures du fabricant, indiquaient expressément que la taxe d'accise était incluse dans le prix de vente ou que les automobiles étaient équipées de climatiseurs, l'appelante avait droit au remboursement de la taxe d'accise.

L'intimé avait rendu une décision concernant des marchandises importées par l'appelante, qui avait eu pour effet d'exiger le paiement de droits antidumping conformément aux conclusions rendues par le Tribunal dans le cadre de l'enquête n° NQ-95-002. La décision était fondée sur la conclusion de l'intimé que le produit en cause, importé des États-Unis par l'appelante, était du sucre raffiné et de même description que les marchandises auxquelles s'appliquent les conclusions du Tribunal.

Pour déterminer que le produit en cause était du sucre raffiné, l'intimé s'était fondé sur des résultats d'essais polarimétriques d'échantillons du produit, effectués au laboratoire de l'ADRC. Aux termes de la note de sous-positions du Chapitre 17, une lecture au polarimètre inférieure à 99,5 degrés correspond à du sucre brut.

L'appelante soutenait que les critères de description du sucre, à l'exception de sa lecture au polarimètre, indiquaient que le produit n'était pas du sucre raffiné. De plus, l'appelante mettait en doute l'exactitude des essais polarimétriques effectués par l'ADRC.

L'appel a été rejeté. Dans le cadre de l'enquête n° NQ-95-002, des droits antidumping avaient été imposés sur le « sucre raffiné tiré de la canne à sucre ou de la betterave sucrière sous forme de granules, de liquide et de poudre, originaires ou exportés des États-Unis d'Amérique ». La seule question en litige dans cet appel consistait à déterminer si le produit en cause était du « sucre raffiné ».

L'exposé des motifs donnés dans le cadre de l'enquête n° NQ-95-002 renvoyait clairement au classement, dans le *Système harmonisé de désignation et de codification des marchandises*, des marchandises auxquelles les conclusions s'appliquent. Un fait pertinent était celui que la note de sous-positions du Chapitre 17 indiquait la lecture au polarimètre comme moyen de détermination de la question de savoir si le sucre est du « sucre brut ». De plus, les *Notes explicatives du Système harmonisé de désignation et de codification des marchandises* (les *Notes explicatives*) de la position n° 17.01 prévoyaient, notamment, que les « sucres de canne [...] raffinés sont obtenus par traitement

complémentaire du sucre brut ».

Le Tribunal a conclu que, puisqu'il la teneur, en poids, en saccharose du produit en cause, à l'état sec, correspondait à une lecture au polarimètre de 99,7 degrés, le produit en cause n'était pas du « sucre brut ». Il était également d'avis qu'un certain traitement complémentaire du « sucre de canne brut » avait eu lieu. Il était donc satisfait aux termes des *Notes explicatives* de la position n° 17.01, qui prévoyaient, notamment, que les « sucres [...] raffinés sont obtenus par traitement complémentaire du sucre brut ». De plus, à la lumière de la définition énoncée des marchandises donnée dans le cadre de l'enquête

Décision :
Appel rejeté
(21 février 2002)

AP-2000-052

ADRC
c.

Les Produits Barlatix
International Inc.

Le tableau 1 du présent chapitre donne une liste des décisions relatives aux appels, rendues au cours de l'exercice.

Des nombreuses causes entendues par le Tribunal dans le cadre de ses fonctions d'appel, plusieurs décisions se distinguent, que ce soit par la nature particulière du produit en cause ou par la portée juridique de la cause. On trouvera ci-après des sommaires d'un échantillon représentatif de tels appels, trois d'entre eux ayant été entendus aux termes de la *Loi sur les douanes*, un, aux termes de la *Loi sur la taxe d'accise* et un, aux termes de la LMST. Ces sommaires ont été préparés uniquement à titre informatif et n'ont aucun statut juridique.

Cet appel a été interjeté aux termes du paragraphe 67(1) de l'ancienne *Loi sur les douanes* et du paragraphe 67(1) de la *Loi sur les douanes* actuelle à l'égard de décisions rendues le 14 septembre 2000 par le commissaire aux termes du paragraphe 63(3) de l'ancienne *Loi sur les douanes* et du paragraphe 60(4) de la *Loi sur les douanes* actuelle.

La question en litige dans cet appel portait sur le classement de mallettes contenant du matériel d'artiste. L'intimé prétendait que ces mallettes devraient être classées à titre d'autres crayons et pastels (numéro tarifaire 9609.90.00) ou, à titre de stylos et marqueurs à mèche feutre (numéro tarifaire 9608.20.00). L'appelante soutenait que les mallettes devraient être classées à titre d'autres jouets (numéro tarifaire 9503.90.00) ou à titre d'autres jouets, présentes en assortiments ou en panoplies (numéro tarifaire 9503.70.90).

L'appel a été rejeté. Le Tribunal a conclu que les marchandises en cause ne pouvaient pas être classées à titre de jouets, étant donné que presque la moitié du contenu se composait d'articles qui sont exclus de la position n° 95.03. Plutôt, les marchandises en cause étaient correctement classées, conformément à la Règle 3 b) des *Règles générales pour l'interprétation du Système harmonisé* (les Règles générales), dans le numéro tarifaire 9609.90.00 à titre d'autres crayons et pastels. Il a été conclu que ces articles représentaient environ 60 p. 100 du contenu des marchandises en cause.

Causes
examinées

déposer une demande de révision. Si le commissaire ne fait pas droit à la demande, l'importateur peut invoquer l'article 60.2 et demander une prorogation directement auprès du Tribunal. L'article 60.2 de la *Loi sur les douanes* prévoit qu'une personne qui a présenté une demande de prorogation au commissaire peut demander au Tribunal d'y faire droit après le rejet de la demande par le commissaire ou à l'expiration d'un délai de 90 jours suivant la présentation de la demande, si le commissaire n'a pas avisé la personne de sa décision. La demande doit se faire par dépôt, auprès du commissaire et du secrétaire du Tribunal, d'une copie de la demande ou d'une copie de l'avis de la décision rendue par le commissaire. Le Tribunal peut rejeter la demande ou y faire droit. Dans ce dernier cas, il peut imposer les conditions qu'il estime justes ou ordonner que la demande soit réputée valide à compter de la date de l'ordonnance.

Pour qu'une demande de prorogation soit accordée aux termes du paragraphe 60.2(4) de la *Loi sur les douanes*, la personne qui présente la demande doit satisfaire à plusieurs conditions. Premièrement, la demande doit avoir été présentée dans l'année suivant l'expiration du délai de 90 jours prévu à l'article 60. Deuxièmement, l'auteur de la demande doit établir qu'il n'a pu ni agir ni mandater quelqu'un pour agir en son nom ou qu'il avait véritablement l'intention de présenter une demande. Troisièmement, l'auteur de la demande doit établir qu'il serait juste et équitable de faire droit à la demande. Quatrièmement, la demande doit avoir été présentée dès que possible. Enfin, il doit y avoir des motifs raisonnables pour l'appel. La demande doit également énoncer les raisons pour lesquelles l'avis d'appel n'a pas été présenté dans le délai prévu.

Au cours de l'exercice, le Tribunal a entendu 33 appels, dont 19 aux termes de la *Loi sur les douanes*, 12 aux termes de la *Loi sur la taxe d'accise* et 2 aux termes de la LMSI. Des décisions ont été rendues pour 59 causes, dont 17 qui ont été entendues au cours de l'exercice.

Décisions relatives aux appels

Loi	Admis	Admis en partie	Rejeté	Total
Loi sur les douanes	10	8	28	46
Loi sur la taxe d'accise	-	1	11	12
LMSI	-	-	1	1

Habituellement, le Tribunal rend une décision motivée sur les questions en litige dans les 120 jours suivant l'audience.

Si l'appelant, l'intimé ou un intervenant n'est pas d'accord avec la décision du Tribunal, il peut porter celle-ci en appel devant la Cour fédérale du Canada.

Le 29 novembre 2001, des modifications législatives apportées à la *Loi sur les douanes* sont entrées en vigueur. L'article 67.1 de la *Loi sur les douanes* prévoit maintenant un moyen qui permet à une personne qui n'a pas déposé un avis d'appel dans le délai de 90 jours prévu à l'article 67 de présenter au Tribunal une demande de prorogation du délai pour interjeter appel.

La demande de prorogation visée à l'article 67.1 de la *Loi sur les douanes* ne sera consentie que si l'auteur de la demande satisfait à diverses conditions. En premier lieu, la demande doit avoir été présentée dans l'année suivant l'expiration du délai d'appel prévu à l'article 67. En deuxième lieu, l'auteur de la demande doit établir qu'il n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou qu'il avait véritablement l'intention d'interjeter appel. En troisième lieu, l'auteur de la demande doit établir qu'il serait juste et équitable de faire droit à la demande. En quatrième lieu, la demande doit avoir été présentée dès que possible. Enfin, l'appel doit être fondé sur des motifs raisonnables. La demande doit aussi énoncer les raisons pour lesquelles l'avis d'appel n'a pas été déposé dans le délai prévu.

Si l'auteur de la demande satisfait aux conditions susmentionnées, le Tribunal peut consentir à la demande et imposer les conditions qu'il estime justes. Contrairement à l'article 81.32 de la *Loi sur la taxe d'accise*, le paragraphe 67.1(3) de la *Loi sur les douanes* prescrit que la demande de prorogation doit être accompagnée de l'avis d'appel. Cela signifie que, si le Tribunal décide de faire droit à la demande, il doit rendre une ordonnance de prorogation du délai pour interjeter appel, même si l'avis d'appel aura déjà été déposé.

Aux termes de l'article 60 de la *Loi sur les douanes*, un importateur peut demander la révision de l'origine, du classement tarifaire ou de la valeur en douane de marchandises importées, dans les 90 jours suivant l'envoi de la détermination. Avant l'entrée en vigueur des articles 60.1 et 60.2, une fois le délai de 90 jours expiré, l'importateur n'avait pas le droit de demander la révision et ne disposait d'aucun autre recours.

Aux termes de l'article 60.1 de la *Loi sur les douanes*, l'importateur pourra, après l'expiration du délai de 90 jours, mais dans l'année suivant la date d'expiration, présenter au commissaire une demande de prorogation du délai pour

Audiences

autres personnes intéressées d'y assister. Selon la complexité des questions en litige et du précédent susceptible d'en découler, les appels seront entendus par un ou trois membres. Des personnes peuvent intervenir dans un appel en indiquant la nature de leur intérêt dans l'appel et la raison pour l'intervention et comment elles peuvent aider le Tribunal à résoudre l'appel.

Une personne peut défendre sa propre cause devant le Tribunal ou se faire représenter par un conseiller juridique ou par tout autre représentant. L'intimé est généralement représenté par un conseiller du ministère de la Justice.

La procédure à suivre au cours de l'audience a été établie de sorte que l'appelante et l'intimé puissent tous deux avoir l'occasion de présenter leurs arguments. Elle permet également au Tribunal d'obtenir les renseignements les plus justes pour prendre une décision. Tout comme dans une cour, l'appelante et l'intimé peuvent citer des témoins à comparaitre, et ces témoins répondent, sous la foi du serment ou d'une affirmation solennelle, aux questions que leur pose la partie adverse ou les membres du Tribunal pour vérifier la validité de leur témoignage. Une fois tous les éléments de preuve présentés, les parties peuvent invoquer des arguments à l'appui de leur position respective.

Le Tribunal, de sa propre initiative ou à la demande de l'appelante ou l'intimé, peut décider de tenir une audience sur la foi d'exposés écrits. Dans un tel cas, le Tribunal publie un avis d'audience dans la *Gazette du Canada* afin de permettre aux autres personnes intéressées d'y participer. Dans l'avis, le Tribunal établit la façon de procéder et le délai pour le dépôt des exposés et le besoin, s'il y a lieu, des parties de déposer un exposé conjoint des faits.

Le Tribunal tient également des audiences par voie électronique, que ce soit par conférence téléphonique ou par vidéoconférence.

Les audiences tenues par conférence téléphonique sont utilisées principalement pour traiter les requêtes préliminaires et les questions de compétence, lorsque la présence ou la participation de témoins n'est pas requise.

Les audiences tenues par vidéoconférence sont utilisées comme alternative aux audiences tenues dans des régions à travers le Canada ou à celles qui exigent que des parties demeurant à l'extérieur de l'Ontario ou du Québec se présentent dans les locaux du Tribunal, à Ottawa. La procédure est semblable à celle d'une audience tenue dans les locaux du Tribunal. Cependant, le Tribunal demande que les documents écrits, les pièces, le matériel pour l'argumentation, etc., soient déposés auprès du Tribunal avant la tenue de la vidéoconférence.

CHAPITRE IV

APPELS

Introduction

Le Tribunal entend les appels des décisions du commissaire aux termes de la *Loi sur les douanes* et de la LMSI ou du ministre du Revenu national (le ministre) aux termes de la *Loi sur la taxe d'accise*. Le Tribunal entend des appels concernant le classement tarifaire et la valeur en douane de marchandises importées au Canada ainsi que concernant l'origine de marchandises importées des États-Unis, du Mexique ou du Chili aux termes de la *Loi sur les douanes*. Le Tribunal entend et décide également des appels relatifs à l'application, à des marchandises importées, de conclusions ou d'une ordonnance du Tribunal concernant le dumping ou le subventionnement et la valeur normale ou le prix à l'exportation ou le subventionnement de marchandises importées aux termes de la LMSI. Aux termes de la *Loi sur la taxe d'accise*, une personne peut faire appel au Tribunal d'une décision du ministre concernant une cotisation ou une détermination de la taxe de vente fédérale ou de la taxe d'accise.

Le Tribunal essaie d'être informel et accessible. Cependant, il existe certaines procédures et certains délais imposés par la loi et par le Tribunal. Par exemple, un appel est interjeté par le dépôt d'un avis par écrit ou d'une lettre d'appel auprès du secrétaire du Tribunal dans le délai prévu par la loi aux termes de laquelle l'appel est interjeté.

Règles de procédure

Conformément aux Règles de procédure du Tribunal, la personne qui interjette appel (l'appelant) dispose habituellement de 60 jours pour déposer auprès du Tribunal un document appelé « mémoire ». En règle générale, le mémoire indique la loi aux termes de laquelle l'appel est interjeté, décrit les marchandises en cause et les points en litige entre l'appelant et le ministre ou le commissaire (l'intimé) et les motifs pour lesquels l'appelant croit que la décision de l'intimé est incorrecte. Une copie du mémoire doit également être remise à l'intimé.

L'intimé doit aussi respecter des délais et suivre une procédure établie. Habituellement, dans les 60 jours qui suivent la réception du mémoire de l'appelant, l'intimé doit remettre au Tribunal et à l'appelant un mémoire dans lequel sa position est énoncée. Le secrétaire du Tribunal communique ensuite avec les deux parties pour fixer la date d'audience. Les audiences se déroulent habituellement en public, devant des membres du Tribunal. Le Tribunal fait paraître un avis d'audience dans la *Gazette du Canada* afin de permettre aux

TABLEAU 5

Causes aux termes de la LMSI devant la Cour fédérale du Canada ou un groupe spécial binationnel entre le 1^{er} avril 2001 et le 31 mars 2002

Cause n°	Produit	Pays d'origine	Tribunal	Dossier n°/état
NQ-99-003	Opacifiants iodés	États-Unis	GSB	CDA-USA-2000-1904-02
NQ-2000-001	Certains réfrigérateurs, lave-vaisselle et sècheuses	États-Unis	GSB	CDA-USA-2000-1904-04
				Décision du Tribunal confirmée (le 16 janvier 2002)
NQ-2000-008	Certaines tôles d'acier résistant à la corrosion	Chine, Inde, Malaisie, Fédération de Russie, Afrique du Sud et Taipei chinois	CF	A-455-01
NQ-2001-001	Certains feuillets et tôles plats en acier, laminés à chaud	Brésil, Bulgarie, Chine, Taipei chinois, Inde, Corée, Macédoine, Nouvelle-Zélande, Arabie saoudite, Afrique du Sud, Ukraine et Yougoslavie	CF	A-528-01
				Retire (4 janvier 2002)
NQ-2001-002	Certaines tôles en acier laminées à froid	Brésil, Taipei chinois, Macédoine, Italie, Luxembourg, Malaisie, Chine, Corée et Afrique du Sud	CF	A-650-01
RR-2000-001	Certains caissons pour puits de pétrole et de gaz	Corée et États-Unis	CF	A-463-01, A-472-01
LE-2001-004	Panneaux de béton	États-Unis	CF	A-657-01

Nota : CF — Cour fédérale du Canada
GSB — Groupe spécial binationnel

Conclusions et ordonnances en vigueur (suite)

Réexamen n° ou enquête n°	Date de la décision	Produit	Pays	Numéro de la décision antérieure et date
RR-99-005	Le 13 septembre 2000	Pommes de terre entières	Etats-Unis	RR-94-007 (le 14 septembre 1995) RR-89-010 (le 14 septembre 1990) CIT-16-85 (le 18 avril 1986) ADT-4-84 (le 4 juin 1984)
NQ-2000-002	Le 27 octobre 2000	Certaines barres rondes en acier inoxydable	Brsil et Inde	
RR-99-006	Le 3 novembre 2000	Sucre raffiné	Etats-Unis, Danemark, Allemagne, Pays-Bas, Royaume-Uni et Union européenne	NQ-95-002 (le 6 novembre 1995)
NQ-2000-004	Le 8 décembre 2000	Chaussures et semelles extérieures étanches	Chine	
NQ-2000-006	Le 2 mai 2001	All. frais ou congelé	Chine et Vietnam	
NQ-2000-007	Le 1 ^{er} juin 2001	Certaines barres d'armature pour béton	Indonésie, Japon, Lettonie, République de Moldova, Pologne, Taipei chinois et Ukraine	
RR-2000-002	Le 24 juillet 2001	Tubes soudés en acier au carbone	Argentine, Inde, Roumanie, Taipei chinois, Thaïlande et Brésil	NQ-90-005 (le 26 juillet 1991) NQ-91-003 (le 23 janvier 1992) RR-95-002 (le 25 juillet 1996)
NQ-2001-001	Le 17 août 2001	Certains feuillets et tôles plats en acier, laminés à chaud	Brsil, Bulgarie, Chine, Taipei chinois, Inde, Macédoine, Afrique du Sud, Ukraine et Yougoslavie	
NQ-2001-003	Le 27 décembre 2001	Chaussures en cuir avec embout protecteur en métal	Chine	
RR-2001-001	Le 20 mars 2002	All. frais	Chine	NQ-96-002 (le 21 mars 1997)

Conclusions et ordonnances en vigueur (suite)

Réexamen n° ou enquête n°	Date de la décision	Produit	Pays	Numéro de la décision antérieure et date
NQ-98-004	Le 2 juillet 1999	Certains produits plats de tôle en acier au carbone et en acier allié, laminés à chaud	France, Roumanie, Fédération de Russie et République slovaque	
RR-98-006	Le 19 juillet 1999	Monuments commémoratifs faits de granit noir et tranches de granit noir	Inde	NQ-93-006 (le 20 juillet 1994)
RR-98-007	Le 28 juillet 1999	Certains produits de tôle d'acier résistant à la corrosion	Bresil, Allemagne, Japon, Corée et Etats-Unis	NQ-93-007 (le 29 juillet 1994)
NQ-99-001	Le 27 août 1999	Certains produits de tôle d'acier laminés à froid	Belgique, Fédération de Russie, République slovaque et Turquie	
NQ-99-002	Le 12 janvier 2000	Certaines barres d'armature pour béton	Cuba, Corée et Turquie	
RR-99-002	Le 20 mars 2000	Jambon en conserve subventionné	Danemark et Pays-Bas	GIC-1-84 (le 7 août 1984) RR-89-003 (le 16 mars 1990) RR-94-002 (le 21 mars 1995)
NQ-99-003	Le 1 ^{er} mai 2000	Opacifiants iodés	Etats-Unis (y compris le Commonwealth de Porto Rico	
RR-99-003	Le 1 ^{er} mai 2000	Bottes pour dames et souliers pour dames	Chine	RR-94-003 (le 2 mai 1995) NQ-89-003 (le 3 mai 1990) RR-94-004 (le 5 juin 1995) RR-89-008 (le 5 juin 1990) ADT-6-83 (le 28 juin 1983)
RR-99-004	Le 5 juin 2000	Tubes soudés en acier au carbone	Corée	
NQ-99-004	Le 27 juin 2000	Certaines tôles d'acier au carbone	Bresil, Finlande, Inde, Indonésie, Thaïlande et Ukraine	
NQ-2000-001	Le 1 ^{er} août 2000	Certains réfrigérateurs, lave-vaisselle et sècheuses	Etats-Unis (WCI et Whitpool)	

TABLEAU 4

Conclusions et ordonnances aux termes de la LMSI en vigueur au 31 mars 2002¹

Réexamen n° ou enquête n°	Date de la décision	Produit	Pays	Numéro de la décision antérieure et date
NQ-96-003	Le 11 avril 1997	Panneaux isolants en polyiso	Etats-Unis	
RR-96-004	Le 21 avril 1997	Tapis produit sur machine à tondre	Etats-Unis	NQ-91-006 (le 21 avril 1992)
NQ-96-004	Le 27 juin 1997	Panneaux de béton	Etats-Unis	
RR-97-001	Le 20 octobre 1997	Certaines chaussures et chaussures en caoutchouc imperméables	Chine	ADT-479 (le 25 mai 1979) ADT-2-82 (le 23 avril 1982) R-7-87 (le 22 octobre 1987) RR-92-001 (le 21 octobre 1992)
NQ-97-001	Le 27 octobre 1997	Certaines toiles d'acier au carbone laminées à chaud	Mexique, Chine, Afrique du Sud et Fédération de Russie	
RR-97-002	Le 28 novembre 1997	Laitue (pommée) iceberg fraîche	Etats-Unis	NQ-92-001 (le 30 novembre 1992)
RR-97-003	Le 10 décembre 1997	Bicyclettes et cadres de bicyclettes	Taipei chinois et Chine	NQ-92-002 (le 11 décembre 1992)
NQ-97-002	Le 29 avril 1998	Certaines préparations alimentaires pour bébés	Etats-Unis	
NQ-98-001	Le 4 septembre 1998	Certaines barres rondes en acier inoxydable	Allemagne, France, Inde, Italie, Japon, Espagne, Suède, Taipei chinois et Royaume-Uni	
RR-98-001	Le 18 novembre 1998	Isolant préformé en fibre de verre pour tuyaux	Etats-Unis	NQ-93-002 (le 19 novembre 1993)
RR-98-004	Le 17 mai 1999	Certaines toiles d'acier au carbone laminées à chaud et certaines toiles d'acier allié résistant à faible teneur	Italie, Corée, Espagne et Ukraine	NQ-93-004 (le 17 mai 1994)
NQ-98-003	Le 18 juin 1999	Certaines barres rondes en acier inoxydable	Corée	
RR-98-005	Le 22 juin 1999	Cartouches de fusils de calibre 12	République tchèque et République de Hongrie	NQ-93-005 (le 22 juin 1994)

1. Pour obtenir la description précise du produit, se reporter aux conclusions ou aux ordonnances indiquées dans la première colonne du tableau.

TABLEAU 3

Ordonnances rendues aux termes de l'article 76.03 de la LMSI entre le 1^{er} avril 2001 et le 31 mars 2002 et réexamens en cours à la fin de l'exercice

Réexamen n°	Produit	Pays	Date de l'ordonnance	Ordonnance
RR-2000-001	Certains caissons pour puits de pétrole et de gaz	Corée et États-Unis	Le 4 juillet 2001	Ordonnances annulées
RR-2000-002	Certains tubes soudés en acier au carbone	Argentine, Inde, Roumanie, Taipei chinois, Thaïlande, Venezuela et Brésil	Le 24 juillet 2001	Ordonnance prorogée Ordonnance annulée/Venezuela
RR-2001-001	Ail frais	Chine	Le 20 mars 2002	Ordonnance prorogée
LE-2001-008	Bicyclettes et cadres de bicyclettes	Taipei chinois et Chine	En cours	
RR-2001-002	Panneaux isolants en polyiso	États-Unis	En cours	
RR-2001-003	Tapis produit sur machine à tisser	États-Unis	En cours	
RR-2001-004	Panneaux de béton	États-Unis	En cours	
RR-2001-005	Certains chaussures et caoutchouc imperméables	Chine	En cours	
RR-2001-006	Certains tôles d'acier au carbone laminées à chaud	Mexique, Chine, Afrique du Sud et Fédération de Russie	En cours	

TABEAU 2

Conclusions rendues aux termes de l'article 43 de la LMSI entre le 1^{er} avril 2001 et le 31 mars 2002 et enquêtes menées aux termes de l'article 42 de la LMSI en cours à la fin de l'exercice

Enquête n°	Produit	Pays	Date des conclusions/ de la décision	Conclusions/Décision
NA-2000-006	All, frais ou congelé	Chine et Vietnam	Le 2 mai 2001	Dommage
NA-2000-007	Certaines barres d'armature pour béton	Indonésie, Japon, Lettonie, République de Moldova, Pologne, Taipei chinois et Ukraine	Le 1 ^{er} juin 2001	Dommage
NA-2000-008	Certaines tôles d'acier résistant à la corrosion	Chine, Inde, Malaisie, Fédération de Russie, Afrique du Sud et Taipei chinois	Le 3 juillet 2001	Aucun dommage/aucune menace de dommage
NA-2001-001	Certains feuillets et tôles plats en acier, laminés à chaud	Brésil, Bulgarie, Chine, Taipei chinois, Inde, Corée, Macédoine, Nouvelle-Zélande, Arabie saoudite, Afrique du Sud, Ukraine et Yougoslavie	Le 17 août 2001	(1) Aucun dommage/ aucune menace de dommage – Corée, Nouvelle-Zélande et Arabie saoudite (2) Dommage – Brésil, Bulgarie, Chine, Taipei, Macédoine, Inde, Afrique du Sud, Ukraine et Yougoslavie (1) Enquête close –
NA-2001-002	Certaines tôles en acier laminées à froid	Brésil, Taipei chinois, Macédoine, Italie, Luxembourg, Malaisie, Chine, Corée et Afrique du Sud	Le 9 octobre 2001	(1) Enquête close – Luxembourg et Malaisie (2) Aucun dommage/ aucune menace de dommage – Brésil, Taipei, Chine, Corée et Afrique du Sud
NA-2001-003	Chaussures en cuir avec embout protecteur en métal	Chine	Le 27 décembre 2001	Aucun dommage/Menace de dommage
NA-2001-004	Tomates fraîches	Etats-Unis	En cours	

TABEAU 1

Décisions provisoires de dommage rendues aux termes du paragraphe 37.1(1) de la LMSI entre le 1^{er} avril 2001 et le 31 mars 2002

Enquête préliminaire de dommage n°	Produit	Pays	Date de la décision	Décision
PI-2000-007	Certaines tôles d'acier laminées à froid	Bresil, Taipei chinois, Macédoine, Italie, Luxembourg, Malaisie, Chine, Corée et Afrique du Sud	Le 11 mai 2001	Dompage
PI-2001-001	Chaussures en cuir avec embout protecteur en métal	Chine	Le 14 août 2001	Dompage
PI-2001-002	Tomates fraîches	États-Unis	Le 8 janvier 2002	Dompage
PI-2001-003	Pare-brise d'auto	Chine	Le 15 février 2002	Dompage

Règlement des différends selon l'OMC

Les gouvernements membres de l'OMC peuvent contester devant les instances d'appel de l'OMC les conclusions de dommage ou les ordonnances rendues par le Tribunal dans des causes de droits antidumping et compensateurs. Ce processus est amorcé par des consultations intergouvernementales. Aucun appel des conclusions ou des ordonnances du Tribunal n'est présentement devant les instances d'appel de l'OMC.

Examen judiciaire ou révision par un groupe spécial des décisions rendues en vertu de la LMSI

béton (RR-2001-004) concernant des importations sous-évaluées en provenance des États-Unis; 4) *Certaines chaussures et couvre-chaussures en caoutchouc imperméables* (RR-2001-005) concernant des importations sous-évaluées en provenance de la Chine; 5) *Certaines toiles d'acier au carbone laminées à chaud* (RR-2001-006) concernant des importations sous-évaluées en provenance du Mexique, de l'Afrique du Sud et de la Russie.

Le 27 novembre et le 7 décembre 2001 respectivement, le commissaire a déterminé que l'expiration des conclusions rendues par le Tribunal dans *Panneaux isolants en polyiso* et dans *Tapis produit sur machine à touffeter* ne causerait vraisemblablement pas une poursuite ou une reprise du dumping des marchandises en question. Le Tribunal rendra des ordonnances qui auront pour effet d'annuler lesdites conclusions aux dates respectivement prévues pour leur expiration.

Les activités du Tribunal en regard aux réexamens relatifs à l'expiration effectuées au cours de l'exercice sont résumées au tableau 3. Les conclusions et les ordonnances du Tribunal en vigueur au 31 mars 2002 sont énumérées au tableau 4.

Toute personne visée par des conclusions ou des ordonnances du Tribunal peut demander un examen judiciaire de la Cour fédérale du Canada pour des motifs de prétendus dénis de justice naturelle et erreurs de fait ou de droit. Dans les causes visant des marchandises en provenance des États-Unis et du Mexique, les parties peuvent demander qu'un examen judiciaire soit effectué par la Cour fédérale du Canada ou qu'une révision soit faite par un groupe spécial binationnel formé en vertu de l'ALBNA. Le tableau 5 énumère les décisions rendues par le Tribunal aux termes de l'article 43, 44 ou 76 de la LMSI qui ont été soumises à la Cour fédérale du Canada pour faire l'objet d'un examen judiciaire ou à un groupe spécial binationnel pour faire l'objet d'une révision au cours de l'exercice.

Au cours de l'exercice, la Cour fédérale du Canada la Cour fédérale du Canada n'avait pas encore entendu les demandes de révision qui lui avaient été soumises au sujet des conclusions rendues par le Tribunal dans *Certaines toiles d'acier résistant à la corrosion* (NQ-2000-008), *Caissons en acier au carbone pour puits de pétrole et de gaz* (RR-2000-001), *Certains feuillards et toiles plats en acier, laminés à chaud* (NQ-2001-001), *Certaines toiles en acier laminées à froid* (NQ-2001-002) et *Panneaux de béton* (LB-2001-004).

Au cours de l'exercice, un groupe spécial binationnel a confirmé les conclusions que le Tribunal a rendues dans *Certains réfrigérateurs, lave-vaisselle et sècheuses* (NQ-2000-001). À la fin de l'exercice, un groupe spécial binationnel n'avait pas encore entendu la demande de révision concernant les conclusions du Tribunal dans *Opacifiants toiles* (NQ-99-003).

La procédure du réexamen relatif à l'expiration est semblable à celle de l'enquête définitive de dommage.

À la fin du réexamen relatif à l'expiration, le Tribunal rend une ordonnance avec motifs à l'appui, annulant ou prorogant l'ordonnance ou les conclusions avec ou sans modifications. Dans le cas où le Tribunal les proroge, les conclusions ou l'ordonnance sont en vigueur pour une période supplémentaire de cinq ans, à moins qu'un réexamen ne soit entrepris et que les conclusions et l'ordonnance ne soient annulées. Si les conclusions ou l'ordonnance sont annulées, les droits antidumping ou compensateurs ne sont plus prélevés sur les importations.

Le Tribunal a effectué trois réexamens relatifs à l'expiration au cours de l'exercice.

Le 4 juillet 2001, le Tribunal a annulé l'ordonnance qu'il avait rendue dans *Certains caissons en acier pour puits de pétrole et de gaz* (RR-2000-001) concernant des importations sous-évaluées en provenance de la Corée et des États-Unis. Les producteurs canadiens suivants, IPSCO, Prudential Steel Limited, Algoma, Algoma Seamless Tubulars Inc. et Stelpipe Ltd. (Stelpipe), et des importateurs et producteurs étrangers ont participé au réexamen relatif à l'expiration.

Le 24 juillet 2001, le Tribunal a prorogé l'ordonnance qu'il avait rendue dans *Certains tubes soudés en acier au carbone* (RR-2000-002) concernant des importations sous-évaluées en provenance de l'Argentine, de l'Inde, de la Roumanie, du Taipei chinois, de la Thaïlande et du Brésil et a annulé l'ordonnance concernant les importations en provenance du Venezuela. Trois producteurs nationaux, Stelpipe, Ispat et IPSCO, et un producteur étranger ont participé au réexamen relatif à l'expiration.

Le 20 mars 2002, le Tribunal a prorogé les conclusions qu'il avait rendues dans *All-frais* (RR-2001-001) concernant des importations sous-évaluées en provenance de la Chine. La Garlic Growers Association of Ontario, la Chambre de commerce chinoise et un cultivateur/exportateur chinois ont participé au réexamen relatif à l'expiration.

Cinq réexamens relatifs à l'expiration étaient en cours à la fin de l'exercice. Ils visaient les ordonnances rendues dans 1) *Panneaux isolants en polyiso* (RR-2001-002) concernant des importations sous-évaluées en provenance des États-Unis; 2) *Tapis produit sur machine à souffler* (RR-2001-003) concernant des importations sous-évaluées en provenance des États-Unis; 3) *Panneaux de*

Réexamens relatifs à l'expiration terminés au cours de l'exercice

Réexamens relatifs à l'expiration en cours à la fin de l'exercice

Réexamens relatifs à l'expiration

qu'il avait rendues le 30 novembre 1992, dans le cadre de l'enquête n° NQ-92-001, concernant la laitue (pomme) Iceberg fraîche, originaire ou exportée des États-Unis d'Amérique, pour utilisation ou consommation dans la province de la Colombie-Britannique.

Le paragraphe 76.03(1) de la LMSI prévoit qu'une ordonnance ou des conclusions sont annulées après cinq ans, à moins qu'un réexamen relatif à l'expiration soit entrepris. Le secrétaire publie dans la *Gazette du Canada*, au plus tard 10 mois avant la date d'expiration de l'ordonnance ou des conclusions, un avis d'expiration. L'avis invite les personnes et les gouvernements à présenter des observations sur la question de savoir si l'ordonnance ou les conclusions doivent faire l'objet d'un réexamen et précise les points sur lesquels les renseignements fournis dans le mémoire doivent porter. Si une demande de réexamen est présentée et que le Tribunal est convaincu de son bien-fondé, le Tribunal procède à un tel réexamen. Lorsque le Tribunal décide de procéder au réexamen, il fait publier un avis de réexamen et avise le commissaire de sa décision. L'avis de réexamen relatif à l'expiration est publié dans la *Gazette du Canada* et une copie est envoyée à toutes les parties intéressées connues.

Le Tribunal a fait publier huit avis d'expiration au cours de l'exercice. Dans six cas, le Tribunal a décidé que le réexamen relatif à l'expiration était fondé et a ouvert un réexamen. Dans *Laitue (pomme) Iceberg fraîche* (LE-2001-007), il n'y a pas eu de demande de réexamen relatif à l'expiration et aucun réexamen n'a été ouvert. Dans *Bicyclettes et cadres de bicyclettes* (LE-2001-008), aucune décision n'était encore prise à la fin de l'exercice.

L'objet d'un réexamen relatif à l'expiration est de déterminer si les droits antidumping ou compensateurs sont toujours nécessaires. Le réexamen relatif à l'expiration comporte deux étapes. La première étape est l'enquête du commissaire pour décider si l'expiration de l'ordonnance ou des conclusions causera vraisemblablement la poursuite ou la reprise du dumping ou du subventionnement. Si le commissaire décide qu'une telle poursuite ou reprise est vraisemblable à l'égard de certaines marchandises, la deuxième étape commence, à savoir l'enquête du Tribunal pour décider si l'expiration des conclusions causera vraisemblablement un dommage ou un retard. Dans le cas où le commissaire détermine, à l'égard de certaines marchandises, qu'un tel dommage ou retard ne sera vraisemblablement pas causé, le Tribunal ne tient pas compte de ces marchandises dans sa décision subséquente sur la probabilité d'un dommage et rend une ordonnance en vue d'annuler l'ordonnance ou les conclusions à leur égard.

Avu cours de l'exercice, le Tribunal n'a pas reçu de demande de décision sur l'identité de l'importateur.

Le Tribunal peut, de sa propre initiative ou à la demande du ministre des Finances, du commissaire, de toute autre personne ou d'un gouvernement, procéder à un réexamen (article 76.01 de la LMSI). Le Tribunal entend un réexamen intermédiaire lorsqu'il est convaincu de son bien-fondé et détermine si les conclusions ou l'ordonnance (ou un de leurs aspects) doivent être annulées ou maintenues jusqu'à leur date normale d'expiration, avec ou sans modifications.

Le réexamen intermédiaire peut être justifié lorsqu'il existe une indication raisonnable de l'existence de changements ou faits postérieurs au prononcé de l'ordonnance ou des conclusions ou d'un changement des circonstances qui ont mené à l'ordonnance ou aux conclusions initiales. Par exemple, depuis le prononcé de l'ordonnance ou des conclusions, la branche de production nationale peut avoir mis fin à la production de marchandises similaires ou il peut avoir été mis fin à des subventions étrangères. Le bien-fondé d'un examen intermédiaire peut aussi s'appuyer sur des faits qui, bien que réels, ne pouvaient être connus lors du prononcé de l'ordonnance ou des conclusions par l'exercice d'une diligence raisonnable.

Le Tribunal a reçu deux demandes de réexamen intermédiaire au cours de l'exercice.

Le 20 novembre 2001, la China Chamber of Commerce for Import & Export of Foodstuffs, Native Produce and Animal By-products (la Chambre de commerce chinoise) et la société Cangshan County Beidouxing Co., Ltd. (CCBC) ont déposé une demande, dont le dossier était complet, afin d'obtenir un réexamen intermédiaire des conclusions rendues par le Tribunal dans *Ali, frais ou congelé* (NQ-2000-006).

Le Tribunal a examiné l'incidence vraisemblable des faits nouveaux et des changements de situation invoqués par la Chambre de commerce chinoise et la CCBC et a déterminé que lesdits faits et changements n'étaient pas suffisants pour justifier un réexamen intermédiaire.

Le 13 février 2002, la BC Vegetable Marketing Commission a demandé que le Tribunal annule immédiatement l'ordonnance qu'il a rendue dans *Latine (pomme) Iceberg fraîche* (RR-97-002) qui doit expirer le 28 novembre 2002. Le 15 mars 2002, le Tribunal a donné avis (RD-2001-002) que, aux termes du paragraphe 76.01(1) de la LMSI, il avait décidé de procéder à un réexamen intermédiaire de l'ordonnance qu'il avait rendue le 28 novembre 1997, dans le cadre du réexamen n° RR-97-002, prorogé, sans modification, les conclusions

Enquêtes de définitions de dommage en cours à la fin de l'exercice

Enquête d'intérêt public aux termes de l'article 45 de la LMSI

Décision concernant l'identité de l'importateur

des prix. Il a conclu que les importations sous-évaluées de chausssures de sécurité en provenance de la Chine menaçaient de causer un dommage aux producteurs canadiens.

Le Tribunal a exclu de ses conclusions les souliers de sécurité en cuir, de type athlétique et de randonnée, de fabrication par collage, ainsi que certaines bottes en cuir avec embout protecteur en métal et semelle de caoutchouc, pour aller à motocyclette.

Il y avait une enquête en cours à la fin de l'exercice.

L'enquête *Tomates fraîches* (NQ-2001-004) concerne des importations sous-évaluées en provenance des États-Unis. La Canadian Tomato Trade Alliance participe à l'enquête au nom des maraîchers serristes canadiens de tomates fraîches.

Les activités du Tribunal relatives aux enquêtes définitives de dommage qu'il a menées au cours de l'exercice sont résumées au tableau 2.

Le Tribunal peut ouvrir une enquête d'intérêt public après avoir rendu des conclusions de dommage causé par des importations sous-évaluées ou subventionnées. Le Tribunal peut décider, de sa propre initiative ou sur demande présentée par toute personne intéressée, en se fondant sur des motifs raisonnables, que l'assujettissement des marchandises en cause à une partie ou au plein montant des droits prévus pourrait être contraire à l'intérêt public. Le cas échéant, le Tribunal tient une enquête d'intérêt public aux termes de l'article 45 de la LMSI. À l'issue de l'enquête, le Tribunal peut transmettre au ministre des Finances un rapport énonçant son avis que les droits devraient être réduits ainsi que le niveau d'intérêt public au cours de l'exercice.

Aux termes de l'article 90 de la LMSI, le commissaire peut demander au Tribunal de rendre une décision sur la question de savoir laquelle de deux personnes ou plus est l'importateur des marchandises faisant l'objet de droits antidumping ou compensateurs. Dans les cas où la personne que le Tribunal considère comme l'importateur n'est pas celle que le commissaire avait désignée, le Tribunal peut réexaminer ses conclusions initiales de dommage sensible en vertu de l'article 91.

Tribunal a dit ne pas avoir de motif de croire à leur retour dans la conjoncture encore pire qui prévalait à ce moment. Par conséquent, il a conclu que le dumping en provenance des pays visés ne menaçait pas de causer un dommage.

L'enquête concernait des importations sous-évaluées de chaussures en cuir avec embout protecteur en métal en provenance de la Chine. La branche de production nationale était constituée de G.A. Boulet Inc., de Canada West Shoe Manufacturing Inc., de L.P. Royer Inc., de Chaussures S.T.C., de Tatra Shoe Manufacturing Inc. et de Terra Footwear, tous membres de l'Association des manufacturiers de chaussures du Canada, et de Dayton Shoe Co. Ltd., de Hichaud Inc., de Mellow Walk Footwear Inc., de Chaussures Vercorp Inc. et de Viberg Boot Manufacturing Ltd. Selon le Tribunal, les boîtes de sécurité en cuir et les souliers de sécurité en cuir étaient des marchandises très semblables les unes par rapport aux autres; elles avaient toutes, pour l'essentiel, la même fonction ultime et formaient une seule catégorie de marchandises.

Le Tribunal a constaté que les tendances des principaux indicateurs économiques des producteurs dégageaient un profil généralement positif pour la période visée par l'enquête. La production avait augmenté, et les ventes et les prix augmentaient plus rapidement que le marché apparent. Le rendement financier s'était aussi amélioré, les marges brutes combinées des producteurs ayant augmenté, passant de 21 p. 100 des ventes nettes en 1998 à 24 p. 100 en 2000. Leur bénéfice d'exploitation combiné avait aussi augmenté en pourcentage des ventes nettes. Le Tribunal n'était pas convaincu que les producteurs auraient augmenté leur volume de ventes en l'absence de dumping. Par conséquent, il a conclu que le dumping des chaussures de sécurité en cuir n'avait pas causé un dommage.

Cependant, le Tribunal a pris en note la croissance spectaculaire des

importations en question qui était partie de presque rien, au début des années 1990, pour en venir, aux six premiers mois de 2001, à capter 63 p. 100 du marché. Les importations avaient continué à croître en août et en septembre. Le Tribunal a observé que la Chine représentait 51 p. 100 de la production totale de chaussures du monde en 1999. Une grande partie de la croissance de la production avait été rattachée à la croissance des exportations de chaussures.

Le Tribunal a conclu que les exportations chinoises de chaussures de sécurité comprenaient de plus en plus de produits haut de gamme et de chaussures de marque qui étaient auparavant produites au Canada. Il a aussi fait observer que la moyenne des prix de gros unitaires des importations était inférieure à celle des producteurs. Le Tribunal a conclu que devant un tel écart des prix, jumelé à l'amélioration continue de la qualité des marchandises en question, les consommateurs permettraient de plus en plus en question le bien-fondé de l'écart

**Chaussures en cuir
avec embout
protecteur en métal**

NO-2001-003

Conclusions :
menace de dommage
(27 décembre 2001)

Au deuxième semestre de 2000, les prix de la branche de production ont fléchi. Le fléchissement s'est accéléré au premier semestre de 2001. Dans la foulée de la baisse des prix nationaux, les marges brutes unitaires de cette dernière ont baissé de presque la moitié, du deuxième au troisième trimestre de 2000, et sont tombées au-dessous de ces coûts unitaires. Au premier trimestre de 2001, la branche de production a commencé à accuser des pertes importantes au niveau des marges brutes et au niveau du bénéfice net unitaire moyen. Le Tribunal a conclu que la branche de production avait subi un dommage important après le milieu de l'année 2000.

Cependant, le Tribunal n'était pas convaincu que les importations sous-évaluées avaient causé le dommage subi par la branche de production. Il a fait observer que, au milieu de l'année 2000, étant donné l'émergence d'un repli économique, les distributeurs d'acier semi-ouvré avaient collectivement réduit leurs achats tant de tôles laminées à froid de production nationale qu'importées en vue de réduire leurs stocks. Ils ont atteint les niveaux voulus à la fin du quatrième trimestre de 2000. Au moment où les ventes de la branche de production déglingolaient, au troisième trimestre de 2000, cette dernière a commencé à réduire ses prix, et ses ventes aux distributeurs d'acier semi-ouvré ont augmenté de façon sensible au quatrième trimestre de 2000. Le Tribunal a conclu que cette augmentation compensait la baisse à ce moment du seuil d'utilisation des aciéries pour la production d'autres tôles en acier laminées à froid, et plus précisément les tôles destinées au secteur de l'automobile. Au moment où les prix nationaux baissaient, les prix moyens des importations en provenance des pays visés augmentaient, aux troisième et quatrième trimestres de 2000, avant de reculer au premier trimestre de 2001. Le Tribunal a conclu que, bien que les prix des importations en provenance des pays visés aient baissé sous le seuil des prix des produits nationaux, l'écart des prix n'était pas suffisamment prononcé pour motiver l'achat d'importations en très grandes quantités.

Le Tribunal a conclu que d'autres facteurs que le dumping avaient aussi eu une incidence négative sur le rendement de la branche de production durant la période qui a suivi le milieu de l'année 2000. Ces autres facteurs incluaient les difficultés imprévues qu'avait rencontrées Stelco dans la mise à niveau de son laminoir à quatre cages, ce qui avait entraîné une augmentation des coûts et de forts volumes de produits de qualité inférieure faisant du même coup baisser les prix des produits de première qualité.

Le Tribunal a fait observer que, bien que le repli économique rende la branche de production vulnérable au dumping, il faisait aussi que le marché canadien n'était pas un marché attirant pour les importations en provenance des pays visés. Ces dernières, dans leur ensemble, avaient disparu du marché canadien au fur et à mesure de la détérioration de la conjoncture du marché. Le

marché marchand national et au marché à l'exportation marchand et la production destinée à une transformation ultérieure à l'intérieur.

Le Tribunal a aussi examiné d'autres facteurs afin de veiller à ce qu'un dommage causé par de tels facteurs ne soit pas attribué aux importations sous-évaluées et subventionnées. Ces facteurs comprenaient les importations en provenance de pays non visés, les difficultés financières d'Algoma et de Maksteel Inc., la capacité des producteurs nationaux d'approvisionner le marché, la contraction de la demande au deuxième semestre de 2000 et la concurrence entre les producteurs nationaux. Cependant, le Tribunal a conclu que de nombreux facteurs n'avaient pas contribué de façon importante au dommage subi par la branche de production nationale. Il n'a pas imputé au dumping et au subventionnement le dommage causé par d'autres facteurs.

L'enquête concernait des importations sous-évaluées de toles en acier laminées à froid en provenance du Brésil, de la Chine, du Taipei chinois, de la Macédoine, de l'Italie, du Luxembourg, de la Malaisie, de la Corée et de l'Afrique du Sud. Les produits suivants ont été exclus des marchandises visées par l'enquête : les toles en acier laminées à froid devant servir à la fabrication de toles galvanisées et dans des utilisations finales dans le secteur de l'automobile, et dans la production du fer-blanc ou de l'acier prépeint. La branche de production nationale était composée de Dofasco, d'Ispat et de Stelco.

Le Tribunal a conclu que le volume individuel de marchandises sous-évaluées en provenance de la Macédoine, de l'Italie, du Luxembourg et de la Malaisie était négligeable, et a mis fin à son enquête visant ces importations. Il a évalué les effets cumulatifs du dumping en provenance des cinq autres pays visés.

Le Tribunal a concentré son analyse sur le secteur des distributeurs d'acier semi-ouvré, qui représentait environ 98 p. 100 des ventes des marchandises en question. Il a conclu que, avant le milieu de l'année 2000, lorsque la conjoncture du marché était robuste en raison de la vigueur de l'économie, les distributeurs d'acier semi-ouvré avaient accumulé des stocks pour répondre à l'accroissement prévu de la demande. Ils s'étaient tournés vers les importations en provenance des pays visés à cause des craintes qu'ils entretenaient au sujet de la capacité des usines nationales à satisfaire leurs besoins. Le Tribunal a aussi conclu que, durant la même période, les prix nationaux et les prix des pays visés avaient augmenté, ceux de ces derniers en venant à correspondre aux prix nationaux. Selon le Tribunal, la branche de production n'avait pas été touchée par la concurrence des importations. De fait, la branche de production avait affiché des valeurs constamment croissantes de marges brutes et de bénéfice net durant cette période. Par conséquent, le Tribunal a conclu que les importations sous-évaluées n'avaient pas causé de dommage à la branche de production avant le milieu de l'année 2000.

**Certaines toles en
acier laminées à froid**
NQ-2001-002
Conclusions :
aucun dommage
(9 octobre 2001)

Le Tribunal a procédé à une évaluation cumulative des effets du dumping et du subventionnement en provenance de tous les pays visés, sauf la Corée, la Nouvelle-Zélande et l'Arabie saoudite. Relativement à ces pays, les conditions de concurrence ne justifiaient pas de les inclure dans l'évaluation des effets cumulatifs et le Tribunal a procédé à une analyse distincte des effets des importations sous-évaluées en provenance de chacun de ces pays.

Au deuxième semestre de 2000, les producteurs nationaux avaient subi une détérioration notable de rendement sur le marché marchand national sous forme de diminution de part de marché, d'effritement des prix et de baisse des marges brutes et du bénéfice net. Étant donné que les importations visées dans les conclusions de 1999 avaient diminué au point d'atteindre des niveaux négligeables en 2000, presque tous les gains de part de marché réalisés par les pays cumules et par les États-Unis avaient été réalisés aux dépens de la branche de production nationale et des pays désignés dans les conclusions de 1999. La part de marché des producteurs nationaux avait reculé, passant de 76 p. 100 en 1999 à 65 p. 100 en 2000.

Le Tribunal a conclu que le dumping des produits de toles en acier, laminés à chaud, en provenance de la Corée, de la Nouvelle-Zélande et de l'Arabie saoudite, causait un dommage sensible à la branche de production nationale. Il a aussi conclu qu'il n'y avait pas de circonstances nettement prévues et imminentes dans lesquelles le dumping au Canada des produits de toles en acier, laminés à chaud, en provenance de la Corée, de la Nouvelle-Zélande et de l'Arabie saoudite, causait un dommage sensible à la branche de production nationale. Il a aussi conclu qu'il n'y avait pas de circonstances nettement prévues et imminentes dans lesquelles le dumping au Canada des produits de toles en acier, laminés à chaud, en provenance de la Corée, de la Nouvelle-Zélande et de l'Arabie saoudite, causait un dommage sensible.

Le Tribunal a conclu que, bien que les importations cumulées n'aient guère eu d'incidence sur le secteur des utilisateurs finals, qui représentaient 36 p. 100 du total des ventes nationales en 2000, elles étaient responsables d'une proportion importante de l'effritement des prix dans le secteur des tuyaux et des tubes (25 p. 100 des ventes nationales en 2000) et d'une majeure partie de l'effritement des prix dans le secteur des centres de services. Il était clair que les marchandises en question en provenance des pays cumules avaient entraîné les prix à la baisse dans ces deux secteurs clés.

Le Tribunal a conclu que, sans le dumping et le subventionnement, la part de marché des producteurs nationaux, le volume de leurs ventes, les prix et l'effritement des prix et la perte de volume expliquaient une partie importante des pertes financières subies par les producteurs nationaux au deuxième semestre de 2000. Le Tribunal a aussi conclu que le dommage subi par la branche de production nationale était sensible, à la lumière des recettes totales découlant de la production de toles en acier laminées à chaud, y compris la production destinée au

de première qualité excédentaires. Le caractère capitalistique de la production d'acier galvanisé et le besoin de maintenir des taux élevés d'utilisation de la capacité avaient contraint la branche de production nationale à vendre les marchandises sur un marché en décroissance et avaient exercé sur les prix une pression supplémentaire à la baisse.

Il n'y avait pas suffisamment d'éléments de preuve pour laisser supposer que les importations de marchandises sous-évaluées ou subventionnées en provenance des pays visés menaient de causer un dommage. Le volume des importations de marchandises importées diminuait et leurs prix continuaient d'être supérieurs aux prix des marchandises de production nationale. Selon les témoignages, les producteurs étrangers avaient appliqué une stratégie d'exportation diversifiée afin de tenter d'exploiter d'autres marchés plus lucratifs au moment du recul de la demande en Amérique du Nord. Le Tribunal a conclu que les importations semblaient répondre à un besoin de source secondaire d'approvisionnement sur le marché national, particulièrement en périodes de pénurie de l'offre. En outre, le Tribunal a pris note que les marges de dumping dans le cas de certains pays et de certains fournisseurs étaient très faibles. À la lumière de telles données, et étant donné la tendance à diriger les importations en provenance des pays visés vers d'autres marchés que le marché canadien, il était difficile de conclure que les importations sous-évaluées et subventionnées causeraient vraisemblablement un dommage sensible à la branche de production nationale dans un avenir prévisible.

Certains feuillets et tôles plats en acier, laminés à chaud

NC-2001-001
Conclusions :
aucun dommage/ dommage
(17 août 2001)

L'enquête concernait le dumping de certains feuillets et tôles plats en acier, laminés à chaud, en provenance du Brésil, de la Bulgarie, de la Chine, du Taipei chinois, de l'Inde, de la Corée, de l'ex-République yougoslave Macédoine (Macédoine), de la Nouvelle-Zélande, de l'Arabie saoudite, de l'Afrique du Sud, de l'Ukraine et de la Yougoslavie, ainsi que le subventionnement de certains feuillets et tôles plats en acier, laminés à chaud, en provenance de l'Inde. La branche de production nationale était composée de Steelco, de Dofasco, d'Algoma Steel Inc. (Algoma), d'Isipat et d'IPSCO Inc. (IPSCO). Dans le cadre de l'enquête n° NQ-98-004 en 1999, le Tribunal avait conclu que des importations sous-évaluées en provenance de la France, de la Roumanie, de la République slovaque et de la Russie avaient causé un dommage à la branche de production nationale.

Le Tribunal a concentré son analyse sur l'incidence du dumping et du subventionnement surtout sur les ventes nationales de tôles en acier laminées à chaud sur le marché marchand. Cependant, le Tribunal a évalué le caractère sensible du dommage causé par le dumping et le subventionnement par rapport à la production de marchandises similaires de la branche de production nationale considérées dans leur ensemble, y compris les marchandises destinées à une transformation ultérieure et à l'exportation.

**Certaines tôles d'acier
résistant à la
corrosion**

NC-2000-008

Conclusions :

aucun dommage/
aucune menace de
dommage

(3 juillet 2001)

baisse de part du marché et d'effritement des prix. En outre, ces pertes de ventes et l'effritement des prix représentaient une proportion importante de la baisse du rendement financier de la branche de production nationale en 2000.

Le Tribunal a examiné d'autres facteurs que le dumping qui pouvaient avoir causé le dommage subi par les producteurs nationaux. Ces facteurs comprenaient les arrêts de production, les tendances des prix de la ferraille ainsi que le volume et les prix des importations en provenance de pays non visés. Le Tribunal a déterminé qu'aucun de ces facteurs n'expliquait de façon satisfaisante le dommage subi par la branche de production nationale.

L'enquête concernait des importations sous-évaluées de tôles d'acier résistant à la corrosion en provenance de la Chine, de l'Inde, de la Malaisie, de la Russie, de l'Afrique du Sud et du Taipei chinois ainsi que des importations subventionnées en provenance de l'Inde. La branche de production nationale était composée de Dofasco Inc. (Dofasco), de Sorevco, de Stelco et de Continuous Colour Coat Limited.

Le Tribunal n'était pas convaincu que l'augmentation subite des importations sous-évaluées et subventionnées en provenance des pays visés au deuxième semestre de 1999 et au premier semestre de 2000 avait causé un dommage à la branche de production nationale. Il a conclu que l'augmentation subite de la demande sur les marchés de la construction et du secteur de l'automobile, étant donné que la branche de production nationale était essentiellement exploitée à plein rendement et que les niveaux des stocks étaient normaux. Une baisse spectaculaire des prix de l'acier résistant à la corrosion, au moment où le marché national des produits de l'automobile ralentissait en 2000, avait entraîné un recul marqué des marges brutes et des bénéfices nets de la branche de production. Selon le Tribunal, d'autres facteurs que les marchandises sous-évaluées et subventionnées avaient causé le dommage subi par la branche de production nationale. Pendant que les prix moyens de la branche de production affichaient un recul marqué au deuxième semestre de 2000, les prix de vente des importations en question avaient en fait augmenté durant la même période et les volumes des importations, diminué.

Le Tribunal a attribué le dommage à la stratégie de concurrence énergétique adoptée au sein même de la branche de production en 2000. Dofasco avait augmenté sa capacité de production grâce à sa nouvelle ligne de galvanisation exploitée dans le cadre de la DoSol Calva Limited Partnership et réduit ses prix alors qu'elle vendait les marchandises supplémentaires sur un marché qui fléchissait. En outre, Stelco avait vendu, à des prix fort réduits, une proportion importante de sa production au titre de produits de qualité inférieure et de produits

la rentabilité et de diminution de la superficie ensemencée. Les marchandises en inférieurs aux coûts de production des cultivateurs nationaux. Selon le Tribunal, la perte financière d'environ 1 million de dollars qui s'est ensuivie était surtout attribuable à l'effritement des prix.

Le Tribunal a aussi examiné d'autres facteurs qui auraient pu avoir un effet sur la branche de production, y compris les conditions météorologiques, d'autres importations à bas prix, l'efficacité des cultivateurs nationaux et la surproduction nationale en 2000. Il a conclu qu'aucun de ces autres facteurs n'avait contribué, dans une mesure importante, au dommage subi par la branche de production nationale.

L'enquête concernait des importations sous-évaluées de barres d'armature pour béton (barres d'armature) en provenance de l'Indonésie, du Japon, de la Lettonie, de la République de Moldova, de la Pologne, du Taipei chinois et de l'Ukraine. Huit sociétés représentaient la production de barres d'armature au Canada. Il s'agit de Stelco Inc. (Stelco), de ses deux filiales en propriété exclusive AltaSteel Ltd et Stelco McMaster Ltee, de Co-Steel Inc., de Gerdau Courtoise Steel Inc., de Gerdau MRM Steel Inc., d'Ispat Sidbec Inc. (Ispat) et de Slater Steel Inc.

Il s'agissait de la deuxième enquête du Tribunal concernant les importations sous-évaluées de barres d'armature. Dans le cadre de l'enquête n° NQ-99-002, le Tribunal avait conclu que les importations sous-évaluées en provenance de Cuba, de la Corée et de la Turquie avaient causé un dommage à la branche de production nationale et que les importateurs avaient remplace leurs sources d'approvisionnement par les pays désignés dans l'enquête n° NQ-2000-007.

Dans cette enquête, le Tribunal a conclu que, dans la foulée de la croissance des importations, les prix s'étaient effondrés à peu près au troisième trimestre de 2000. Des témoins ont déclaré que les importations en provenance des pays visés étaient les chefs de file incontestés au niveau des prix sur le marché national. Puisque les barres d'armature sont l'élément le plus important des coûts au moment de soumissionner pour obtenir des marchés et que de faibles écarts dans le coût des barres d'armature peuvent souvent déterminer le résultat d'une soumission, les constructeurs-monteurs étaient contraints d'acheter des importations sous-évaluées pour demeurer concurrentiels. Durant la période visée par l'enquête, les marges brutes et les bénéfices nets de la branche de production nationale avaient affiché une détérioration marquée.

Le Tribunal a conclu que les volumes considérables et les bas prix des barres d'armature sous-évaluées en provenance des pays désignés avaient causé un dommage à la branche de production nationale sous forme de pertes de ventes, de

**Certaines barres
d'armature pour béton**
NQ-2000-007
Conclusions :
dommage
(1^{er} juin 2001)

par les importateurs et les exportateurs. Après contre-interrogatoire par les parties et interrogation par le Tribunal, chaque partie a l'occasion de répondre aux arguments de l'autre partie et de résumer ses propres arguments. Dans de nombreuses enquêtes, le Tribunal convoque des témoins qui sont bien informés sur la branche de production et sur le marché en cause. Des parties peuvent également chercher à obtenir des exclusions des conclusions, dans le cas où le Tribunal rend des conclusions de dommage sensible ou de retard, ou de menace de dommage sensible à une branche de production nationale, représentent l'autorité légale pour l'imposition de droits antidumping ou compensateurs par l'ADRC.

Le Tribunal doit rendre ses conclusions dans les 120 jours suivant la date de la décision provisoire du commissaire. Le Tribunal dispose d'une période

supplémentaire de 15 jours pour présenter un exposé des motifs de ses conclusions. Les conclusions de dommage sensible ou de retard, ou de menace de

dommage sensible à une branche de production nationale, représentent l'autorité légale pour l'imposition de droits antidumping ou compensateurs par l'ADRC.

Le Tribunal a effectué six enquêtes définitives de dommage au cours de l'exercice. Il s'agit des enquêtes suivantes : *Ail, frais ou congelé* (NQ-2000-006), *Certaines barres d'armature pour béton* (NQ-2000-007), *Certaines tôles d'acier résistant à la corrosion* (NQ-2000-008), *Certains feuillets et tôles plats en acier laminés à chaud* (NQ-2001-001), *Certaines tôles en acier laminées à froid laminées à chaud* (NQ-2001-002) et *Chaussures en cuir avec embout projecteur en métal* (NQ-2001-003). En 2000, les marchés canadiens pour ces produits étaient évalués à 20 millions de dollars pour l'ail, 350 millions de dollars pour les barres d'armature, 930 millions de dollars pour les tôles résistant à la corrosion, 3,3 milliards de dollars pour les feuillets et tôles plats en acier, laminés à chaud, 830 millions de dollars pour les tôles en acier laminées à froid et 175 millions de dollars pour les chaussures.

L'enquête concernait le dumping au Canada d'ail, frais ou congelé, en provenance de la Chine et du Vietnam, à l'exclusion de l'ail frais faisant l'objet des conclusions rendues par le Tribunal dans le cadre de l'enquête n° NQ-96-002 (c.-à-d. l'ail importé de la Chine du 1^{er} juillet au 31 décembre inclusivement, de chaque année civile). La branche de production nationale était composée de 96 cultivateurs de l'Ontario représentés par la Garlic Growers Association of Ontario. Ces cultivateurs représentaient plus des deux tiers de la production collective canadienne d'ail. Le Tribunal a conclu que l'ail, frais ou congelé, constituait une seule catégorie de marchandises.

Le Tribunal a conclu que les importants volumes et les très bas prix de l'ail sous-évalué originaire de la Chine et du Vietnam avaient causé un dommage sensible aux cultivateurs nationaux sous forme d'effritement des prix, de baisse de

Enquêtes
définitives de
dommage
terminées au
cours de
l'exercice

Ail, frais ou congelé
NQ-2000-006
Conclusions :
dommage
(2 mai 2001)

sur les importations à compter de la date de la décision provisoire. Le commissaire poursuit son enquête jusqu'à ce qu'une décision définitive soit rendue à l'égard du dumping ou du subventionnement.

Comme pour une enquête préliminaire de dommage, le Tribunal essaie de s'assurer que toutes les parties intéressées sont informées de l'ouverture de l'enquête. Il fait donc publier un avis d'ouverture d'enquête dans la *Gazette du Canada* et envoie une copie aux personnes qui, à sa connaissance, sont des parties intéressées.

Lorsqu'il mène une enquête définitive de dommage, le Tribunal demande des renseignements aux parties intéressées, reçoit des observations et tient des audiences publiques. Le personnel du Tribunal effectue des recherches poussées pour chacune des enquêtes. Le Tribunal envoie des questionnaires aux producteurs, aux importateurs et aux acheteurs nationaux et aux producteurs étrangers. Les données provenant des réponses aux questionnaires servent de fondement aux rapports du personnel, ces derniers mettant l'accent sur les facteurs dont le Tribunal doit tenir compte pour rendre des décisions concernant le dommage sensible ou le retard, ou la menace de dommage sensible à une branche de production nationale. Ces rapports deviennent une partie du dossier et sont mis à la disposition des conseillers et des parties.

Les parties à la procédure peuvent défendre leur propre cause ou se faire représenter par des conseillers. Les renseignements confidentiels ou délicats d'un point de vue commercial sont protégés conformément aux dispositions de la Loi sur le TCCE.

Le Règlement sur les mesures spéciales d'importation prévoit des facteurs qui peuvent être examinés par le Tribunal lorsqu'il détermine si le dumping ou le subventionnement de marchandises a causé un dommage sensible ou un retard, ou menace de causer un dommage sensible à une branche de production nationale. Ces facteurs comprennent, entre autres, le volume des marchandises qui font l'objet de dumping ou de subventionnement, les effets qu'ont ces marchandises sur les prix et l'incidence des marchandises qui font l'objet de dumping ou de subventionnement sur la production, les ventes, la part de marché, les bénéfices, les emplois et l'utilisation de la capacité de production.

Le Tribunal tient une audience publique environ 90 jours après l'ouverture de l'enquête, celle-ci débutant normalement juste avant que le commissaire rende une décision définitive de dumping ou de subventionnement. À l'audience publique, les producteurs nationaux essaient de convaincre le Tribunal que le dumping ou le subventionnement des marchandises a causé un dommage sensible ou un retard, ou menace de causer un dommage sensible à une branche de production nationale. La position des producteurs nationaux est alors contestée

pas d'audience et rend sa décision provisoire dans les 60 jours suivant l'ouverture de son enquête.

Si le Tribunal conclut que les éléments de preuve indiquent, de façon raisonnable, que le dumping ou le subventionnement a causé un dommage ou un retard, ou menace de causer un dommage, il rend sa décision en ce sens et le commissaire continue l'enquête de dumping ou de subventionnement. Si les éléments de preuve n'indiquent pas, de façon raisonnable, que le dumping ou le subventionnement a causé un dommage ou un retard, ou menace de causer un dommage, le Tribunal fait alors clore l'enquête et le commissaire met fin à l'enquête de dumping ou de subventionnement. Le Tribunal publie ses motifs dans les 15 jours suivant sa décision.

Le Tribunal a effectué quatre enquêtes préliminaires de dommage au cours de l'exercice.

L'activité du Tribunal relative aux enquêtes préliminaires de dommage qu'il a menées au cours de l'exercice est résumée au tableau 1.

Lorsque le commissaire décide de ne pas faire ouvrir d'enquête parce que les éléments de preuve n'indiquent pas, de façon raisonnable, que le dumping ou le subventionnement des marchandises a causé un dommage ou un retard ou menace de causer un dommage, le commissaire ou la partie plaignante peut, aux termes de l'article 33 de la LMSI, demander au Tribunal de se prononcer sur la question de savoir si les éléments de preuve dont dispose le commissaire indiquent, de façon raisonnable, que le dumping ou le subventionnement a causé un dommage sensible ou un retard, ou menace de causer un dommage sensible à une branche de production nationale.

L'article 37 de la LMSI exige que le Tribunal donne son avis sur la question dans les 30 jours. Le Tribunal rend sa décision, sans tenir d'audience publique, en se fondant sur les renseignements dont disposait le commissaire lorsque la décision concernant l'ouverture a été rendue.

Le Tribunal n'a pas reçu de demande d'avis aux termes de l'article 33 de la LMSI au cours de l'exercice.

Lorsque le commissaire rend une décision provisoire de dumping ou de subventionnement, le Tribunal fait ouvrir une enquête définitive de dommage aux termes de l'article 42 de la LMSI. L'ADRC peut imposer des droits provisoires

**Enquêtes
préliminaires de
dommage
terminées au
cours de
l'exercice**

**Avis donné aux
termes de
l'article 37 de la
LMSI**

**Enquêtes
définitives de
dommage**

CHAPITRE III

ENQUÊTES DE DOMMAGE ET RÉEXAMENS EN MATIÈRE DE DUMPING ET DE SUBVENTIONNEMENT

Processus

Aux termes de la LMSI, l'ADRC peut imposer des droits antidumping et compensateurs lorsqu'un dommage est causé aux producteurs nationaux par des marchandises importées au Canada, soit :

- à des prix inférieurs aux prix de vente sur le marché intérieur ou à des prix inférieurs au coût de production (dumping), ou

- qui ont été produites grâce à certains types de subventions gouvernementales ou à d'autres formes d'aide (subventionnement).

Les décisions concernant l'existence de dumping et de subventionnement relèvent de l'ADRC. Le Tribunal détermine si ce dumping ou ce subventionnement a causé un « dommage sensible » ou un « retard », ou menace de causer un dommage sensible à une branche de production nationale.

Enquêtes préliminaires de dommage

Le processus débute lorsqu'un producteur canadien ou une association de producteurs canadiens demande redressement du préjudice dumping ou subventionnement dommageable en déposant une plainte auprès du commissaire de l'ADRC. Si le commissaire ouvre alors une enquête de dumping ou de subventionnement, le Tribunal procède à une enquête préliminaire de dommage aux termes du paragraphe 34(2) de la LMSI. Le Tribunal essaie de s'assurer que toutes les parties intéressées en sont informées. Il fait donc publier un avis d'ouverture d'enquête préliminaire de dommage dans la *Gazette du Canada* et en envoie une copie aux personnes qui, à sa connaissance, sont des parties intéressées.

Dans le cadre de l'enquête, le Tribunal détermine si les éléments de preuve indiquent, « de façon raisonnable », que le dumping ou le subventionnement a causé un dommage ou un retard, ou menace de causer un dommage. Le Tribunal se fonde principalement sur les renseignements reçus du commissaire et les exposés reçus des parties. Le Tribunal tente d'obtenir l'opinion des parties sur la question de savoir quelles sont les marchandises similaires et quels sont les producteurs nationaux compris dans la branche de production nationale. Le Tribunal ne distribue normalement pas de questionnaires et ne tient normalement

Mandat législatif du Tribunal (suite)

Article	Attributions
76	Réexamins des conclusions de dommage entrepris par le Tribunal ou à la demande du commissaire ou d'autres personnes intéressées
76.01	Réexamins intermédiaires
76.02	Réexamins sur renvoi d'ordonnances rendues par le Tribunal et nouvelles auditions
76.03	Réexamins relatifs à l'expiration
76.1	Réexamins des conclusions de dommage entrepris à la demande du ministre des Finances
89	Décisions sur l'identité de l'importateur
Loi sur les douanes	
67	Appels de décisions du commissaire visant la valeur en douane et l'origine et le classement de marchandises importées
67.1	Demandes de prorogation du délai pour déposer des avis d'appel
68	Appels interjetés auprès de la Cour fédérale du Canada
70	Consultations demandées par le commissaire relativement au classement tarifaire ou à la valeur en douane de marchandises
Loi sur la taxe d'accise	
81.19, 81.21, 81.22, 81.23, 81.25 et 81.33	Appels à l'égard de cotisations et de déterminations du ministre du Revenu national
81.32	Demandes de prolongation du délai pour opposition ou appel
Loi sur le droit à l'exportation de produits de bois-d'œuvre	
18	Appels à l'égard de cotisations et de déterminations du ministre du Revenu national
Loi sur l'administration de l'énergie	
13	Déclarations des redevances d'exportation sur le pétrole
12	

Mandat législatif du Tribunal

Article	Attributions
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Loi sur le TCCE

18	Enquêtes sur des questions touchant les intérêts économiques ou commerciaux du Canada sur saisine du gouverneur en conseil
19	Enquêtes sur les questions relatives aux tarifs douaniers sur saisine du ministre des Finances
19.01	Enquêtes sur les mesures de sauvegarde concernant les marchandises importées des États-Unis et du Mexique
19.02	Examens à mi-période des mesures de sauvegarde et rapport
20	Enquêtes sur les mesures de sauvegarde concernant l'importation au Canada de marchandises et enquêtes sur la prestation de services au Canada par des personnes n'y résidant pas habituellement
23	Plaintes des producteurs nationaux visant des mesures de sauvegarde
23(1.01) et (1.02)	Plaintes des producteurs nationaux visant des mesures de sauvegarde concernant les marchandises importées des États-Unis et du Mexique
30.08 et 30.09	Mesures de sauvegarde
30.11	Plaintes des fournisseurs potentiels visant des contrats spécifiques
LMSI	
33 et 37	Avis donné au commissaire
34(2) et 35(3)	Enquête préliminaire
37.1	Décision provisoire de dommage
42	Enquêtes concernant le dommage causé par le dumping et le subventionnement de marchandises
43	Conclusions du Tribunal concernant le dommage
44	Reprise de l'enquête (sur renvoi de la Cour fédérale du Canada ou d'un groupe spécial binational)
45	Intérêt public
46	Avis donné au commissaire
61	Appels de réexamins du commissaire effectués en application de l'article 59 concernant la question de savoir si les marchandises importées sont de même description que les marchandises auxquelles s'appliquent les conclusions du Tribunal, les valeurs normales et les prix à l'exportation ou les subventions à l'exportation

PRÉSIDENT

Pierre Gosselin

VICE-PRÉSIDENTS

Patricia M. Close
Richard Lafontaine

MEMBRES

Peter F. Thalheimer
Zdenek Kvarda
James A. Ogilvy
Ellen Fry

SECRÉTARIAT

Secrétaire
Michel P. Granger

DIRECTION DE LA RECHERCHE

Directeur exécutif, Recherche
Ronald W. Erdmann

DIRECTION DES SERVICES JURIDIQUES

Avocat général
Reagan Walker

économique et financière des entreprises et des industries ainsi que de la recherche des faits exigée dans le cadre des enquêtes du Tribunal, et l'avocat général, responsable de la prestation de services juridiques.

Consultations

Par l'intermédiaire du Comité de la magistrature et du barreau (Tribunal/Association du Barreau canadien), le Tribunal fournit une tribune pour discuter des questions d'importance avec le Barreau. Le comité inclut également des experts-conseils en commerce. Le Tribunal tient également des réunions avec des représentants d'associations d'avocats, des divers secteurs industriels et autres qui comparassent ou qui peuvent comparaître devant le Tribunal, et ce, afin d'échanger des opinions sur les nouvelles procédures considérées par le Tribunal avant qu'elles ne soient publiées sous forme de lignes directrices ou de notes de procédures. Le Tribunal tient aussi des séances d'information sur sa procédure à l'intention des ministères du gouvernement fédéral et des associations professionnelles.

- faire enquête et donner son avis sur des questions économiques, commerciales et tarifaires dont le gouverneur en conseil ou le ministre des Finances saisit le Tribunal.

Le Tribunal tient des audiences publiques dans le cadre de presque toutes les responsabilités qu'il assume. Celles-ci ont habituellement lieu dans les locaux du Tribunal à Ottawa (Ontario), mais, le cas échéant, elles peuvent se tenir ailleurs au Canada, en personne ou par voie de vidéoconférence. Le Tribunal applique des règles et une procédure semblables à celles d'une cour de justice, mais d'une façon plus souple. La Loi sur le TCCB prévoit que les causes sont entendues en général par trois membres, de la manière « la plus efficace, la plus équitable et la plus expéditive » dans les circonstances. Le Tribunal peut citer des témoins à comparaitre et exiger des parties qu'elles produisent des renseignements. La Loi sur le TCCB renferme des dispositions qui protègent les renseignements confidentiels. Seuls les conseillers indépendants qui ont déposé un acte de déclaration et d'engagement de confidentialité peuvent avoir accès aux renseignements confidentiels.

Les décisions du Tribunal peuvent, selon le cas, être réexaminées ou portées en appel devant la Cour fédérale du Canada et, finalement, la Cour suprême du Canada, ou devant un groupe spécial binational formé en vertu de l'ALENA lorsqu'il s'agit d'une décision aux termes de la LMSI touchant les intérêts des États-Unis ou du Mexique, ou de ces deux pays à la fois. Les gouvernements membres de l'OMC peuvent contester certaines des décisions du Tribunal auprès d'un groupe spécial de règlement des différends formé en vertu du *Mémorandum d'accord concernant les règles et procédures régissant le règlement des différends de l'OMC*.

Membres

Le Tribunal peut compter neuf membres à plein temps, dont un président et deux vice-présidents, nommés par le gouverneur en conseil pour un mandat d'au plus cinq ans, qui peut être renouvelé une fois. Cinq membres supplémentaires, au plus, peuvent être nommés temporairement. Le président est le premier dirigeant et est responsable de l'affectation des membres et de la gestion des affaires internes du Tribunal. Les membres viennent de diverses régions et leurs antécédents scolaires et professionnels sont des plus variés.

Organisation

Les membres du Tribunal, présentement au nombre de 7, peuvent compter sur l'appui d'un effectif de 86 employés. Ses principaux agents sont le secrétaire, responsable de la gestion intégrée, des relations publiques, des échanges avec les autres ministères gouvernementaux et les gouvernements ainsi que des fonctions de greffier du Tribunal; le directeur exécutif de la Recherche, chargé de l'analyse

Mode de fonctionnement

CHAPITRE II

MANDAT, ORGANISATION ET ACTIVITÉS DU TRIBUNAL

Introduction

Le Tribunal est un tribunal administratif qui fait partie des mécanismes de recours commerciaux du Canada. Il est un organisme quasi judiciaire et indépendant qui assume ses responsabilités législatives de façon impartiale et autonome et relève du Parlement par l'entremise du ministre des Finances.

Les principaux documents législatifs régissant les travaux du Tribunal sont la Loi sur le TCCE, la LMSI, la Loi sur les douanes, la Loi sur la taxe d'accise, le Règlement sur le Tribunal canadien du commerce extérieur (Règlement sur le TCCE), le Règlement sur les enquêtes du Tribunal canadien du commerce extérieur sur les marchés publics et les Règles du Tribunal canadien du commerce extérieur (Règles de procédure).

Mandat

Le mandat principal du Tribunal est le suivant :

- mener des enquêtes afin de déterminer si l'importation de produits qui font l'objet de dumping ou de subventionnement a causé, ou menace de causer, un dommage sensible à une branche de production nationale;
- entendre les appels interjetés à l'égard de décisions rendues par l'ADRC aux termes de la Loi sur les douanes, de la Loi sur la taxe d'accise et de la LMSI;
- enquêter sur des plaintes déposées par des fournisseurs potentiels concernant les marchés publics fédéraux visés par l'Accord de libre-échange nord-américain (ALENA), l'Accord sur le commerce intérieur (ACI), l'Accord sur les marchés publics (AMP) de l'OMC et l'Accord sur les marchés d'équipements de télécommunications;
- enquêter sur des demandes présentées par des producteurs canadiens qui souhaitent obtenir des allègements tarifaires sur des intrants textiles importés aux fins de production;
- mener des enquêtes sur les mesures de sauvegarde relativement aux plaintes déposées par des producteurs nationaux qui soutiennent que l'augmentation des importations leur cause, ou menace de leur causer, un dommage grave;

Causes du dernier exercice qui ont été reportées	Causes reçues pendant l'exercice	Total	Décisions rendues/rapports publiés	Causes retirées/ non reprises/ suspendues 31 mars 2002
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ACTIVITÉS LIÉES À LA LMSI

Enquêtes préliminaires de dommage	1	3	4	4	-
Enquêtes	3	4	7	6	-
Enquêtes d'intérêt public	-	-	-	-	-
Demandes de réexamen	-	2	2	-	1
Intermédiaire	-	2	2	2	1
Expirations	-	2	2	2	-
Réexamens relatifs à l'expiration	2	6	8	3	-

APPELS

Loi sur les douanes	79	56	135	46	31	58
Loi sur la taxe d'accise	89	37	126	12	18	96
LMSI	2	5	7	1	-	6
Total	170	98	268	59	49	160

ENQUÊTES SUR LES QUESTIONS ÉCONOMIQUES, COMMERCIALES ET TARIFAIRES, ET LES MESURES DE SAUVEGARDE

Saisine sur les textiles	-	-	-	-	-	-
Demandes d'allègement tarifaire	4	2	6	3 ¹	-	2
Expirations	-	-	-	-	-	-
Réexamens	-	-	-	-	-	-
Demandes de nouvel examen	-	-	-	-	-	-
Questions économiques, commerciales et tarifaires	-	-	-	-	-	-
Enquête de sauvegarde	-	1	1	-	-	1

ACTIVITÉS LIÉES À L'EXAMEN DES MARCHÉS PUBLICS

1. Au cours de l'exercice, le Tribunal a remis au ministre des Finances trois rapports concernant quatre demandes d'allègement tarifaire.

Accès aux avis, décisions et publications du Tribunal

Respect des délais législatifs (publication en temps opportun)

Les avis et décisions du Tribunal sont publiés dans la *Gazette du Canada*. Ceux qui concernent les plaintes relatives aux marchés publics sont également publiés sur MBRX (Service électronique d'appel d'offres du Canada).

Le site Web du Tribunal constitue un service d'archives complet des avis, des décisions et des publications du Tribunal, de même que d'autres renseignements relatifs aux activités actuelles du Tribunal. Le Tribunal a aussi lancé un nouveau service d'annonce à l'intention des personnes inscrites sur sa liste de distribution. Ces dernières pourront ainsi être avisées de tout nouvel affichage sur le site Web dans les domaines de compétence du Tribunal qu'elles auront désignées. Le nouveau service permet aussi de s'inscrire, ou d'annuler son inscription à la liste de distribution, en direct. Ce service est gratuit.

Toutes les enquêtes du Tribunal ont été terminées à temps, et les décisions ont été publiées dans les délais prévus par la loi. En ce qui concerne les appels interjetés à l'égard de décisions en matière de douanes et d'accise pour lesquels aucun délai législatif n'est prévu, le Tribunal publie habituellement, dans les 120 jours suivant l'audience, une décision sur la question en litige, y compris les motifs de sa décision.

causé par des importations en provenance de la République populaire de Chine (Chine). Le Tribunal pourrait devoir procéder à une enquête lorsqu'il y a eu soit une désorganisation du marché (c.-à-d. une augmentation rapide des importations de marchandises chinoises similaires ou directement concurrentes par rapport aux marchandises canadiennes) soit une mesure (prise par un autre membre de l'OMC) qui cause ou menace de causer un important détournement des échanges vers le Canada. Ces mesures commerciales spéciales, appelées sauvegardes, seront disponibles jusqu'au 1^{er} décembre 2013.

Le projet de loi C-50 modifie aussi la LMSI pour accorder à l'ADRC une plus grande flexibilité lors d'enquêtes antidumping relatives à des marchandises importées de la Chine, lorsque le prix ou le coût de production de ces marchandises en Chine n'est pas établi en fonction de la conjoncture de l'économie de marché.

Le 7 février 2002, le *Règlement modifiant le Règlement sur les mesures spéciales d'importation*, relativement à l'importation massive de marchandises sous-évaluées ou subventionnées, est entré en vigueur. Le 23 février 2002, il a été publié dans la Partie II de la *Gazette du Canada*. Il guide les enquêtes menées par le Tribunal aux termes des alinéas 42(1)b) et c) de la LMSI. Les modifications garantiront une plus grande transparence et une meilleure prévisibilité en établissant les facteurs pris en compte pour décider si un dommage a été causé par l'importation massive de marchandises sous-évaluées ou subventionnées, ou par une série d'importations de telles marchandises, massives dans l'ensemble et échelonnées sur une période relativement courte.

Le 29 novembre 2001, des modifications législatives apportées à la *Loi sur les douanes* sont entrées en vigueur. Les articles 60.2 et 67.1 de la *Loi sur les douanes* prévoient qu'une personne peut présenter au Tribunal une demande de prorogation de délai. (Voir le chapitre IV pour obtenir un complément d'information.)

Le 7 juin 2001, la Cour suprême du Canada a rendu une décision qui traitait de la norme de contrôle applicable aux décisions du Tribunal portant sur la valeur en douane de marchandises importées en vertu de la *Loi sur les douanes*. Dans *Canada (Sous-ministre du Revenu national) c. Maitel Canada*, [2001] 2 R.C.S. 100, la Cour suprême du Canada a décidé que la norme de contrôle applicable aux décisions du Tribunal, qui était indiquée dans de telles affaires, était la norme de la décision correcte sur tout point de droit. (Voir le chapitre IV pour obtenir un complément d'information sur cette décision de la cour.)

En septembre 2001, le Tribunal a diffusé sur son site Web une trousse électronique intitulée « Compléter une plainte de marché public ». La trousse donne aux parties plaignantes potentielles un aperçu de la compétence du Tribunal et de sa procédure, et leur permet de déposer leurs plaintes en ligne.

Au cours de l'exercice, le Tribunal a remis trois rapports au ministre des Finances concernant quatre demandes d'allègement tarifaire. Deux demandes d'allègement tarifaire étaient en cours à la fin de l'exercice. En outre, le 25 février 2002, le Tribunal a présenté au ministre des Finances son septième rapport de situation annuel sur le mécanisme d'enquête.

Le 21 mars 2002, son Excellence la Gouverneure générale en conseil, sur recommandation du ministre des Finances et du ministre du Commerce international, conformément à l'alinéa 20(a) de la *Loi sur le Tribunal canadien du commerce extérieur* (Loi sur le TCCÉ), a ordonné au Tribunal d'enquêter et de faire rapport sur l'importation de certaines marchandises de l'acier.

Tel qu'il a été ordonné par son Excellence, le Tribunal transmettra avis de toute décision le 4 juillet 2002 et un rapport exposant les motifs de toute décision et toute recommandation le 19 août 2002.

Le Tribunal a publié des décisions concernant 59 appels interjetés à l'égard de décisions rendues par le ministère du Revenu national et par l'Agence des douanes et du revenu du Canada (ADRC) aux termes de la *Loi sur les douanes*, de la *Loi sur la taxe d'accise* et de la LMSI.

Le Protocole d'accèsion de la République populaire de Chine à l'Organisation mondiale du commerce (OMC) est entré en vigueur le 11 décembre 2001.

Le projet de loi C-50, qui a été adopté en deuxième lecture, modifie la *Loi sur le TCCÉ*, le *Tarif des douanes* et la *Loi sur les licences d'exportation et d'importation* pour permettre au gouverneur en conseil d'imposer, dans certaines conditions et après une enquête du Tribunal, des mesures commerciales spéciales en vue de protéger les industries canadiennes d'un dommage qui pourrait être

Saisine sur les questions commerciales et tarifaires

Textiles

Enquête de sauvegarde

Appels

Modifications législatives ayant une incidence sur la compétence du Tribunal

CHAPITRE I

FAITS SAILLANTS DU TRIBUNAL AU COURS DE L'EXERCICE

Au cours de l'exercice, le Tribunal canadien du commerce extérieur (le Tribunal) a rendu quatre décisions provisoires de dommage aux termes du paragraphe 37.1(1) de la *Loi sur les mesures spéciales d'importation* (LMSI). Le Tribunal a également rendu six conclusions à la suite d'enquêtes de dommage aux termes de l'article 42 de la LMSI et trois ordonnances à la suite de réexamens aux termes de l'article 76.03. À la fin de l'exercice, deux enquêtes et trois réexamens relatifs à l'expiration étaient en cours.

Enquêtes et réexamens en matière de dumping et de subventionnement

Enquêtes d'intérêt public

Aux termes de l'article 45 de la LMSI, le Tribunal peut ouvrir une enquête d'intérêt public après avoir rendu des conclusions de dommage causé par des importations sous-évaluées ou subventionnées. Le Tribunal peut décider, de sa propre initiative ou sur demande présentée par une personne intéressée, que l'assujettissement de marchandises à une partie ou au plein montant des droits prévus pourrait être contraire à l'intérêt public. Au cours de l'exercice 2001-2002, le Tribunal n'a pas tenu d'enquêtes d'intérêt public après avoir rendu des conclusions de dommage dans trois enquêtes.

Examen des marchés publics

Le Tribunal a reçu 77 plaintes au cours de l'exercice. Le Tribunal a publié 32 décisions écrites afférentes à ses conclusions et à ses recommandations. Vingt et une d'entre elles concernaient des causes qui étaient en cours à la fin de l'exercice 2000-2001.

En juillet 1999, les gouvernements de la République de Corée (Corée) et du Canada ont signé l'*Accord sur les marchés d'équipements de télécommunications* qui établit les règles et procédures concernant les marchés publics portant sur les équipements de télécommunications et les services accessoires fournis par des fabricants et des fournisseurs de services des deux pays. L'accord prévoit aussi l'application de règles non discriminatoires pour ce qui concerne l'achat des équipements de télécommunications visés par les institutions fédérales désignées. Il prévoit aussi que le gouvernement fédéral doit adopter et maintenir des procédures de contestation des offres assujetties à l'accord. Le Tribunal a été désigné comme organisme chargé d'examiner les contestations des offres aux termes de l'accord. Le *Règlement sur les enquêtes du Tribunal canadien du commerce extérieur sur les marchés publics* a donc été modifié. L'accord a été ratifié et est entré en vigueur le 1^{er} septembre 2001.

Chapitre VI

66	Sommaire des activités liées à l'examen des marchés publics
71	Règlement des plaintes concernant les marchés publics entre le 1 ^{er} avril 2001 et le 31 mars 2002
76	Causes concernant les marchés publics devant la Cour fédérale du Canada entre le 1 ^{er} avril 2001 et le 31 mars 2002

TABLE DES MATIÈRES

Chapitre I	Faits saillants du Tribunal au cours de l'exercice	1
Chapitre II	Mandat, organisation et activités du Tribunal	7
Chapitre III	Enquêtes de dommage et réexamens en matière de dumping et de subventionnement	13
Chapitre IV	Appels	37
Chapitre V	Saisines sur les questions économiques, commerciales et tarifaires, et mesures de sauvegarde	51
Chapitre VI	Examen des marchés publics	65
	Publications produites par le Tribunal pendant l'exercice	77

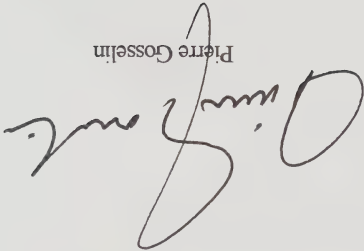
Le 26 juin 2002

L'honorable John Manley, c.p., député
Vice-premier ministre et ministre des Finances
Chambre des communes
Ottawa (Ontario)
K1A 0A6

Monsieur le Ministre,

J'ai l'honneur de vous transmettre, pour dépôt à la Chambre des communes, conformément à l'article 41 de la *Loi sur le Tribunal canadien du commerce extérieur*, le rapport annuel du Tribunal canadien du commerce extérieur pour l'exercice se terminant le 31 mars 2002.

Je vous prie d'agréer, Monsieur le Ministre, l'expression de ma considération distinguée.


Pierre Gosselin

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POUR L'EXERCICE SE TERMINANT
LE 31 MARS 2002

Tribunal canadien
du commerce
extérieur

Rapport annuel

2001-2002

TRIBUNAL CANADIEN
DU COMMERCE
EXTÉRIEUR

Tribunal canadien du
commerce extérieur
Canadian International
Trade Tribunal



